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New Jersey. Legislature

TESTIMONY

taken before the

Committee of the Senate and House of Assembly

of the

STATE OF NEW JERSEY

to

Investigate the Granting of Riparian Lands by the State, Etc.

PATERSON, N. J.
CHRONICLE PRINT.
1906.

St
NJ

COMMITTEE:

EDMUND W. WAKELEE, Senator from Bergen;
JOHN BOYD AVIS, Senator from Gloucester;
JAMES T. MINTURN, Senator from Hudson;
FRANK CROWTHER, Assemblyman from Middlesex;
WALTER SCOTT REED, Assemblyman from Monmouth;
SAMUEL P. JONES, Assemblyman from Camden;
OLIVER C. HOLCOMBE, Assemblyman from Hunterdon;
ALFRED N. BARBER, Assemblyman from Mercer.

CHAIRMAN:
SENATOR WAKELEE.

SECRETARY:
ASSEMBLYMAN BARBER.

COUNSEL:
THE ATTORNEY-GENERAL.

Trenton, N. J., July 11, 1906.

The Committee appointed by the President of the Senate and Speaker of the House of Assembly to investigate the granting of riparian lands by the state, etc., as provided by Senate Joint Resolution No. 16, met in the senate chamber today at 2 p. m.

PRESENT :

SENATORS—WAKELEE, AVIS, MINTURN.

ASSEMBLYMEN—CROWTHER, REED, JONES, HOLCOMBE, BARBER.

Absent—None.

Senator Avis moved that Senator Wakelee serve as chairman of the committee, which was agreed to.

Senator Minturn moved that Mr. Barber serve as secretary of the committee, which was agreed to.

Senator Wakelee proposed the following resolution, which was adopted.

RESOLVED, That the Attorney-General serve as counsel for the committee and that he be requested to furnish such data as he may have bearing upon the matter to be considered.

Senator Minturn offered the following resolution, which was adopted :

RESOLVED, That the Riparian Commissioners and their engineer be requested to appear before the committee at the next meeting, bringing data and maps showing grants up to the present time, and what land remains to be granted.

Senator Minturn moved that Mr. Frederick W. Gnichtel be appointed stenographer to report the committee's proceedings, which was agreed to.

On motion of Senator Avis the committee adjourned to meet in the Senate Chamber on Wednesday, July 18th, at 11 a. m.

A. N. BARBER,
Secretary.

STATE HOUSE.

Trenton, N. J., July 18, 1906.

Meeting of Special Committee of the New Jersey Legislature to investigate the granting of Riparian Lands by the State, etc.

PRESENT:

SENATORS WAKELEE (Chairman) and MINTURN, and ASSEMBLYMEN REED, JONES, HOLCOMBE and BARBER.

ASSISTANT ATTORNEY-GENERAL DUFFIELD and MR. BACKES, of the ATTORNEY-GENERAL'S OFFICE, were also present:

CHAIRMAN WAKELEE.—I might announce that the minutes have been made up by Mr. Barber, and typewritten by the stenographer, of our former meeting, and that in accordance with the first resolution the Attorney-General has consented to serve as counsel for the committee, and has designated Mr. Duffield to represent him before the committee. I think it is the wish of the committee that we also be provided with a sergeant-at-arms; I think we ought to have somebody to attend to that business.

On motion of Senator Minturn, John J. Lovett was appointed sergeant-at-arms.

CHAIRMAN WAKELEE.—Has Mr. Duffield any suggestions to make at this time?

MR. DUFFIELD.—It seems to me that it would be wise to authorize the Attorney-General to employ such clerical assistance, with the approval of the chairman of this committee, as might be necessary. I assume that this investigation may take rather a wide scope, and there will be considerable clerical work which will have to be done both in the examination of the laws of our own state and the compilation of the laws of other states, in order to determine which is the best way of handling this question, and that can probably be best done by the employment of clerical assistance. It will be impossible to do that with the office force of the Attorney-General's office, although we will be glad to do what we can. I

can't say now what would be advisable in that respect, and I suggest that we be given authority to employ such clerical assistance, subject to the approval of the chairman of the committee, who, of course, is easily found when required.

On motion of Senator Minturn the Attorney-General was authorized to employ the necessary clerical assistance, subject to the approval of the chairman of the committee.

MR. DUFFIELD.—It is scarcely possible, in the short time that I have been familiar with the fact that we would be expected to assist the committee in this matter, to outline a complete scheme of investigation. The purpose of this investigation, I take it, is to determine first, what methods have been used in the past for the disposition of the state riparian lands; and secondly, to utilize that knowledge for the purpose of framing a comprehensive system of laws which will protect the state in the distribution of those assets. Unquestionably, the matter is one of the utmost importance, and one that will require considerable work on the part of the committee and counsel. At present it has seemed wise to take up with the committee, the present Commission in a general way, the methods which are now being used in the disposition of lands, find out just what lands we have left, and what we have disposed of, and what methods have been pursued in the past. I think we can advance on these lines today, and possibly after a short adjournment go into the various lines suggested, which will be opened up from time to time.

SENATOR MINTURN.—Don't you think it would be advisable for the Commission to be furnished with a copy of the various enactments under which the Riparian Commissioners are now acting?

MR. DUFFIELD.—I expect to prepare that. I understand the Commission has prepared a compilation of the laws up to 1894, and I regret that they are not here. We will bring them down to date.

SENATOR WAKELEE.—I think, too, when we get to the latter part of our resolution, to recommend any future policy, that the Attorney-General ought to find out, as far as possible, the policy of other states and other countries.

MR. DUFFIELD.—We will be very glad to act on that suggestion, and will endeavor to have that before the Committee before it completes its labor. I think probably the extent to which we can go today is the examination of the present Commissioners and the secretary, laying the foundation in that way for further progress. I will call Mr. Cloke.

SENATOR WAKELEE.—Before doing that, I will ask if any member of the Commission has any suggestion to make. If not, we will take that course.

SENATOR MINTURN.—I want to make a suggestion to the Attorney-General that can be taken up later on by him in the course of our proceedings. It is an entirely legal and constitutional one; whether or not the present system of granting lands under water between high and low water mark in this state is constitutional. I don't think the question has been discussed by any of our courts, or by the Supreme Court of the United States, and I think we ought to give that some consideration, in dealing with the problem ultimately.

MR. DUFFIELD.—What is your thought as to the constitutionality of the present method?

SENATOR MINTURN.—I think there has been a discussion in the courts both ways, but I don't think it has been settled.

MR. DUFFIELD.—I will be glad to have that matter taken up.

CHAIRMAN WAKELEE.—I think in the compliation of the laws of this state, any decision of the courts should be included.

SENATOR MINTURN.—I assume that our proceedings will be printed, and, therefore, we ought to make it as thorough as possible both as to the law and the fact.

MR. DUFFIELD.—I think we will be able, as Senator Wakelee suggested, to make a compilation of the laws and also a digest of the decisions, including also the decisions of the Supreme Court of the United States. There are one or two cases that have gone there, perhaps more.

SENATOR WAKELEE.—It has often been suggested, from time to time, that the whole scheme is unconstitutional. I have heard that.

SENATOR MINTURN.—The question was raised before Vice Chancellor Pitney in the case of Jersey City vs. The Delaware, Lackawanna and Western Railroad to recover one of the streets down there, and I think Mr. Allan McDermott raised this in his brief before the Vice-Chancellor. The case was decided by the Vice-Chancellor adversely to Jersey City, and it went to the Court of Errors and Appeals, and I think the decision was affirmed, although I have no direct knowledge on that point; whether they went into the constitutionality of the riparian statutes I don't know.

MR. DUFFIELD.—I don't think they did.

SENATOR MINTURN.—It is a very interesting question to me; there may be nothing in it, but it is of sufficient importance to go into it.

MR. DUFFIELD.—In a recent Elizabeth case that question was raised, Elizabeth vs. The Central Railroad, before Vice-Chan-

cellor Emery, and the Court of Errors and Appeals have avoided expressing their views.

SENATOR MINTURN.—That was before the Jersey City case, and he based his decision in the Jersey City case entirely upon the Jersey City case.

Counsel offered in evidence a copy of Senate Joint Resolution No. 16, of which the following is a copy :

SENATE JOINT RESOLUTION NO. 16.

STATE OF NEW JERSEY.

Joint Resolution providing for the appointment of a Committee of the Legislature to investigate the granting of riparian lands by the state, and report what changes, if any, should be made in the law in connection therewith.

Be it resolved by the Senate and General Assembly of the State of New Jersey.

1. That a Committee of the Legislature, to consist of three Senators, to be appointed by the President, and five members of the General Assembly, to be appointed by the Speaker, be authorized and directed to investigate the entire subject of the granting by the state of leases and grants of riparian lands, what methods have been pursued in the past, what lands are now held by the State which may hereafter be the subject of riparian lease or grant, what lands have been heretofore granted by the State and under what condition, what methods have been used for the determination of values in fixing the rentals, and in general the whole subject of leases granted by the State of its riparian lands.

2. The said committee shall have the right to employ counsel, a stenographer and other clerical assistants as may be necessary, and, with the approval of the governor, fix their compensation, which shall be paid by the treasurer on the warrant of the comptroller.

3. The said committee shall have authority to sit after the final adjournment of the Legislature.

4. This resolution shall take effect immediately.

E. C. STOKES,
Governor.

Approved May 22, 1906,

WILLIAM CLOKE sworn. Examined by Mr. Duffield.

Q. Where do you live ? A. Trenton.

Q. You are a member of the Riparian Commission, are you not? A. Yes, sir.

Q. You are the chairman of that Commission? A. Vice-chairman, the Governor is the chairman, but I am acting chairman.

Q. How long have you been a member of the Commission? A. Since 1894.

Q. How long have you been chairman or acting chairman? A. About two years, I think.

Q. The ordinary routine work of the Commission is usually performed in the absence of the Governor and the Attorney-General, both? A. Usually.

Q. What is your custom in that respect? A. When we have a very important problem before us, on which we want the illuminating minds of the Governor and the Attorney-General, we notify them.

BY SENATOR MINTURN.

Q. Does that mean when you have a legal question or an important question of fact? A. When we have a very important grant, an application for a very important grant or lease, which the members of the Board may have some difference of opinion upon, we then ask the Governor to attend. If there are legal questions that we are incapable of settling ourselves from our knowledge of past precedents in the performance of our duty, we call upon the Attorney-General and he usually sends Mr. Duffield; sometimes he comes himself.

BY SENATOR WAKELEE.

Q. Is the Attorney-General a member of the Board? A. No.

Q. Simply the legal adviser of it? A. That is all. We formerly had a legal adviser specially for own use; Mr. Record, who was counsel for the Board for many years, and under the administration of Governor Murphy, an act was passed abolishing all special counsel of Boards and Commissions throughout the state, and devolving that duty upon the Attorney-General's office. They have, as I understood it, appointed some additional assistants, and they do all that work, including ours.

BY MR. DUFFIELD.

Q. During the period that you have been connected with the Board, what methods have been pursued by you in making grants; won't you describe the routine?

BY SENATOR MINTURN.

Q. Before you answer that, I want to ask, how often has the Governor been called in? A. Very seldom; only once or twice during the time he has been Governor.

Q. On what subject? A. I don't recall what the question was. We met down in his office here; I think twice. We held our meeting

in the executive chamber in order that we might not interfere with the executive duties, and he met with us.

BY SENATOR WAKELEE.

Q. Was that recently, or during the first part of the term? A. No special time.

Q. The present Governor? A. Yes, sir.

Q. And about former Governors? A. The former Governors used to meet with us; Governor Griggs nearly always attended, so did Werts; and Governor Voorhees was very frequently there.

Q. Were notices sent out? A. When the notices are sent out for a meeting the Governor is notified as a member of the Board, and I, in consultation with Governor Stokes about it—his duties being very onerous—told him, when we particularly needed him, if he didn't want to attend all our meetings, I would let him know. So that when we have a knotty and important problem, and we want his judgment, we specially invite him to be present.

Q. Have you any rules and regulations of the Board? A. No, we have not; have we, Mr. Payne?

MR. PAYNE.—No.

BY SENATOR MINTURN.

Q. Where do you meet? A. In Jersey City, the Commercial Trust building, fourth floor.

Q. How often, or how long have you met in Jersey City? A. Ever since the Board was organized.

Q. When was that? A. I think in 1869.

Q. What reason is there for the Board meeting there? A. They met there in the first place, and ever since, because it is convenient to the large and valuable and important riparian interests of the state, and convenient to those whom you might call the customers of the state, who want to purchase the valuable lands.

Q. Everything you have in your possession is a state record, and ought to be in the State house, why should not the records of the Riparian Board be here in Trenton and get-at-able by everybody? A. They are get-at-able.

Q. I mean have all the records here? A. That is an open question.

Q. But that has been the policy of the Board? A. Yes, sir; for the reasons I have stated. It is convenient to the patrons of the state, to their counsel, and near to the valuable lands in possession of the state.

Q. And the only exception to meeting there is when the Governor was necessary and you met in his office? A. Yes, sir; to make it convenient for him.

BY SENATOR WAKELEE.

Q. How often do you hold regular meetings? A. Once a month regular meetings.

Q. How often do you hold special meetings? A. Sometimes once a week, it depends upon the pressure of business.

Q. Can you give us any idea of the number of grants which you make during the year? A. We can, but not today.

SENATOR MINTURN.—I want to suggest there are some preliminary questions prior to the going into the matter of grants. I have in mind, and Senator Wakelee also, questions that we think the Committee ought to be enlightened upon, and one is, the compensation of Commissioners.

BY MR. DUFFIELD.

Q. How much compensation do the Commissioners receive? A. $1,500 a year.

Q. That has been the same how long? A. Ever since the Board was started.

Q. What clerks do the Board employ? A. We have a secretary and engineer, combined in one. We formerly had an engineer, Mr. Bacot, who was engineer, and the secretary was Mr. Payne; when Mr. Bacot died, he was getting $5,000 a year—

BY SENATOR MINTURN.

Q. As engineer? A. As engineer; and I forget what we were paying the secretary. After he died—before he died—we concluded that the business could be transacted by one person serving as secretary and engineer, and Mr. Payne being specially competent for both duties, we combined the two offices in him and selected him as our officer. He gets now, I think, $3,500 a year. Is that true, Mr. Payne?

MR. PAYNE.—Yes.

A. So that instead of paying about $7,000 a year as we did during the first years of my service, we are paying $3,500 a year.

Q. What rent do you pay for your office? A. I think $50.00 a month.

BY SENATOR WAKELEE.

Q. Any other clerical assistance? A. We have a stenographer and typewriter that we pay $15.00 a week, something like that.

Q. You receive the expenses through the regular appropriation? A. The regular appropriation that is made for carrying on the work of the Commission.

Q. You don't take it out of the money received? A. Not at all; we transmit that to the treasurer; we don't handle a dollar.

BY SENATOR MINTURN.

Q. Checks are made payable to the treasurer? A. Yes, sir; they are.

BY SENATOR. WAKELEE.

Q. How are the expenses paid? A. Heretofore, when we had to go to Elizabeth for instance to inspect important property that is applied for as a grant or a lease, for transporation and expenses we take out of the fund that is appropriated for that purpose enough to prosecute the work of the commission.

Q. The Legislature appropriates that? A. Yes, sir.

Q. How much is appropriated? A. I think $6,000.

BY MR. DUFFIELD.

Q. Has that been fairly constant lately? A. Once in awhile there is a little increase; for instance, we have to set up the boundary marks once in three years, and then we ask for a little special appropriation of about $500.00, and I think last year we turned back into the treasuary some $800.00.

BY SENATOR WAKELEE.

Q. That $6,000, is that for miscellaneous expenses outside of your salary? A. No, that is our salaries and other expenses.

Q. All the expenses of the Board? A. No, let me see—yes, that is so.

MR. PAYNE.—No, the $6,000 is for the expenses of the Board.

A. That is for everything outside of the salaries of the Commissioners; our checks are sent us as they are to everybody else.

MR. DUFFIELD.—Are there any other suggestions you desire to make before we take up the methods pursued?

SENATOR MINTURN.—I was thinking whether there was any other department of the State Government that has not apartments in the State House.

MR. DUFFIELD.—The Tenement Commission, I think, has apartments in Newark; beyond that, I know of nothing.

SENATOR MINTURN.—They are about the only Commissions outside of the State House?

MR. DUFFIELD.—They are about all I know of, except, of course, the various institutions of the state, such as the Rahway Reformatory and things like that; but I know of no state institution.

MR. REED.—I don't think the Fish and Game Commissioners have offices here, and the Oyster Commission.

SENATOR MINTURN.—Have they offices anywhere?

MR. REED.—No special offices, but I think they keep the records with the presidents.

SENATOR MINTURN.—They meet here in the State House?

MR. REED.—Yes.

BY MR. DUFFIELD.

Q. What records does the Commission keep? A. Shall I answer your previous question as to the routine works?

Q. I think possibly I prefer to have you take up this question of the records first. A. I was going to suggest that you ask Mr. Payne that. He can tell you exactly what they are.

Q. Now, we will take up the question I asked you some time ago, as to what the methods of procedure are in the granting of leases; describe the routine method. A. When a party comes before the Board and makes application—or preliminary to that he writes to the secretary, a party who wants a grant or a lease, often the letter comes to me and I transmit it to Mr. Payne. A letter will come from somebody, asking what is the price of riparian land at such a place, and what steps shall I take to acquire a grant or lease, as the case may be.

Q. Explain, won't you, to the committee, what authority you have under the present law to make conveyances, and what kind of conveyances you make; the different kinds of conveyances? A. The different kinds?

Q. Yes. A. Well, you will find that in the laws. The laws, as I said, governing the Riparian Board were all compiled by us in 1894, and since then we depend upon the different acts, upon the statutes, not very numerous, and we find in those laws the power to make riparian grants and leases of riparian lands. When a grant is applied for, I direct them to write the engineer for information, and he gives them explicit and full direction, with documents to fill in, so that they don't need the intervention of any third party to help them out. If he is a man of ordinary intelligence, he can deal with the Board directly without any difficulty. Then we notify them when the application will be before the Board, and on that day usually the party making the application appears in person and we get out a map. Mr. Payne brings out a map covering the section where the application is made, and we ask him questions, if we are unfamiliar with the details, as to what he wants it for, questions as to the general character of the physical situation there; what the upland is worth, the abutting upland, how deep the water is, whether there is a flat in front of this ripa, or whether deep water comes close to shore, etc. If we are unfamiliar with the matter, and it is a matter of importance—generally we are pretty familiar with the entire situation, but if it is a matter of considerable importance we go and look at it, send the engineer, or the

committee goes and investigates the matter, but generally we are pretty familiar with the physical situation of all our tidal waters, especially those which we call active riparian properties; that is to say, where they are in demand and nearby. Then we consult among ourselves as to the value. We generally ask the applicant what is his view about it. We arrive, after consultation among ourselves as to the situation there, its convenience to ports, the character of the water, as to whether it is navigable, and a number of factors entering into it—at a conclusion. We fix the value, if it is a grant, at so much a running front foot. If it is a lease we fix it in the same way; fix the amount of the principal sum in the same way, and our consultations are sometimes quite lengthy. And sometimes in the course of our consideration of a question of that kind, we will send for the applicant again, who has retired—we are in executive session while we are doing this—we send for him to come back, and ask further questions, and out of it all we arrive at what we consider an equitable price, and then he can take it or leave it. We never try to urge him to take it, because we don't consider that we are trying to set up a bargain counter in this riparian property.

BY SENATOR MINTURN.

Q. On what basis do you assess riparian lands in different localities? A. How do we arrive at the value?

Q. Yes, at the figures? A. A variety of factors enter into it; its nearness to port, the value of the upland, its availability for commercial purposes, its accessibility to railroads, the depth of the water, and a lot of things like that.

BY ASSEMBLYMAN BARBER.

Q. Is the judgment of the Commissioners in regard to valuation usually accepted by the parties applying? A. Well, usually; of late, however, the Board has been a little stiffer in its prices; we have set up a bull market in riparian property, and a considerable number of the applicants have declined to take at the figures we have fixed. Whenever you want my views on that point I am ready to give them. I have my own views as to the policy the state should pursue as to price.

BY SENATOR MINTURN.

Q. When was that policy fixed, as to a fixed policy, the policy that has resulted in these people declining to take the grant? A. A year and a half or so ago.

Q. Do you get, in fixing the grant, do you get the judgment of real estate men and others on that subject? A. On the upland?

Q. Yes? A. Well, yes, we do.

Q. You don't accept the figures of the applicant as to the value of the upland? A. Oh, no.

BY SENATOR WAKELEE.

Q. What is the nature of the lease that you give? A. The lease that we give is in perpetuity.

BY SENATOR MINTURN.

Q. Practically a fee. A. We fix the principal sum, what is that worth. You can take it and pay the State for it in a lump sum, or take it on a lease, you take it in perpetuity, and it is convertible into a grant.

BY SENATOR WAKELEE.

Q. What do they pay on that lease? A. Seven per cent.

Q. On the principal sum? A. Yes, sir.

BY SENATOR MINTURN.

Q. You give them the option? A. A grant or lease.

MR. DUFFIELD.—The lease itself provides for that; it has a clause by which they may at any time compute the fixed sum upon which they are supposed to be paying interest; and by the payment of that sum may acquire an absolute fee.

SENATOR WAKELEE.—The lease is practically a grant, except instead of paying for it you pay interest on the principal?

MR. DUFFIELD.—That is it exactly, with, of course the right of the state to re-enter in case the rent is not paid. An important feature of this may be the amount of land upon which no rental is being paid; old leases where the rental has not been paid?

THE WITNESS.—Yes, that is true.

Q. Are there such cases? A. Lots of them. They have been submitted to the treasurer to prosecute, where they have defaulted. They pay the rent awhile, and they find the land is not worth that, and they quit paying.

Q. What you mean by rent is 7 per cent on the principal sum? A. Yes, sir; and the state, as I understand, can sue and recover the property.

MR. DUFFIELD.—Under the operation of the law passed this winter, I think the state is in a position where they may do something. Their hands were tied before that.

BY SENATOR MINTURN.

Q. Are there any such cases of default on the Hudson river? A. Quite a number.

Q. In what locality? A. I don't recall.

MR. DUFFIELD.—We have a list of those which we will turn

over to the committee at some future time. I think that is one of the important features of this committee to take up.

BY MR. DUFFIELD.

Q. I notice in your description of the method pursued by the Commissioners in arriving at the value of the riparian lands, the chief inquiry that was addressed, was to the applicant; what further methods do you take to ascertain the truth of his statement? A. That phase of the subject is a very important factor in arriving at the value of the grant. We don't take his view at all, but as I said before, we arrive at a conclusion as to the value of those lands from physical and known facts. As I say, we sometimes ask the applicant some questions as to his views, as to what he is going to do there. For example, a man will come there and make application and say he is going to locate a plant there that will cost a million dollars, and others might want it simply to reclaim the shore for residential purpose, and bank and sod it. There is that wide latitude between the different grants.

Q. Does that fact and the use to which it is to be put affect the Commissioners in fixing the price? A. Somewhat; if a man is going there to locate a plant worth a million dollars, give employment to 500 men, and bring enormous yearly wages into the State and develop a mud flat into an industrial enterprise, we think he is entitled to some consideration.

Q. So that in the case of a manufacturer and other concerns, the price which you would fix would be at a lower rate than where the land was to be devoted to other uses? A. Yes, we would consider that, and I think it is sensible to do it.

BY SENATOR MINTURN.

Q. Do you give any attention to the value of the upland in fixing the value of the land in the application? A. Yes.

Q. How do you fix that value? A. Those values are pretty well known in the locality where we make these grants. Take up in Hudson County, Jersey City; we have all the assessed values of those plots along the shore front and inland quite a distance; we can tell you the taxable rate of any plot that is there.

Q. You have that in your office? A. Yes, sir; and the general value of this land depends upon certain facts, their accessibility to navigable waters, their convenience to port, their accessibility to the railroad, and all those things enter into it; and the more these conditions exist, the more valuable the grant is. We have had application for several large grants up along the Hudson river.

Q. In a case where you would find the value of the ripa to be worth $50.00 per foot, would you make the price of the land desired

by the applicant less than $50.00 a foot, or would you keep it up to that at least? A. We don't base the value entirely upon the value of the upland by the front foot.

Q. My idea was, would you make that the minimum, as a starting point? A. The value of the upland by the foot, and by the front foot?

Q. Any way that you measure it? A. We take that into consideration, but we don't estimate it with mathematical certainty as to its being a strict guide for fixing the value of the riparian land.

BY SENATOR WAKELEE.

Q. I suppose there may be cases where the upland might be very valuable because of some other reason, and that reason would not apply? A. That is right, there might be a mud flat right in front.

BY MR. DUFFIELD.

Q. Besides the statement of the applicant as to the value of the land, the use that he is going to put it to; besides the knowledge which you have, either from the assessment or from other records, what other method do you adopt to determine the proper value to be placed upon these lands before making the grant, or a deed? A. What other conditions enter into this?

Q. No; what other sources of information do you seek; do you go to real estate men?

SENATOR MINTURN.—Do you visit the place personally?

Q. Or do you base the valuation upon similar grants, previously made by your Board; whatother methods do you pursue to determine the price? A. Well, of course, grants that we have made in the same neighborhood, within a recent period, are to some considerable extent a guide. If we have been making a grant at a certain figure, on a certain stream or body of water, and the conditions have not changed, and there are no particular changes in the physical situation, we take that as the important factor in arriving at a conclusion.

BY SENATOR WAKELEE.

Q. You have described the method by which you arrive at the value, won't you tell us what value you are trying to arrive at? Is it the highest value that it is worth to anybody, the highest value that it is worth to the owner of the upland, or the future value as the country develops? What is the value that you are trying to fix? A. We fix a value that we think will make it desirable to the purchaser or applicant to acquire it. We have, as I remarked a little while ago, made the figures so high in some cases that they would not take it at all. Now it is evident, therefore, that if the State

wants to dispose of this land for the purpose of developing our shore front, we are fixing a price too high.

Q. Too high by comparison? A. Yes, sir; as a matter of fact here are large concerns, I know of several that we have driven away from New Jersey to other states, large and important enterprises.

Q. What is your duty under the law, does the law charge you with any duty as to the value? A. No, I think not.

Q. It is left to your discretion? A. I don't know of any; it is left in our discretion.

Q. Is there any distinction made, whether the use is to be a public use on the part of the applicant; suppose the city of Jersey City should apply for a grant; does that make any difference whether it is the city of Jersey City, or some individual? A. As a matter of strict technical compliance with the law, I should say no.

Q. No distinction? A. I say as a matter of strict construction I should say that we are not in a position to make any concession to anybody for any purpose; yet at the same time, we have discretion, there is discretion lodged in us, and we are supposed to have common sense and bring it to bear upon these problems; and when a public corporation applies for property for public purposes and not as a means of gain, it seems to me reasonable that we should at least give them the benefit of whatever doubt that we have. And so if a large corporation wants to come to New Jersey, hesitating whether it should come to New Jersey or go to Staten Island or go to Connecticut, and if they are going to locate a plant in this State that will give employment to many men and increase our taxable property enormously, we give them consideration. I happen to think of one now. A party came into this State, we allowed them an abatement in price in consideration that they would locate a plant there of a certain amount; their plant was to be half a million; it cost two million and gave employment to many people. That plant is now paying taxes into the municipality and into the State. I don't know how much, I had the figures, but they are enormous, an enormous increase over the taxes for the land that lay there unused and undeveloped. If we had put a high price on it—they were considering going somewhere else—we would have lost that large enterprise.

Q. In your judgment, had you not made that price as you did, the State would have lost that enterprise? A. I feel sure of it. Therefore, I say this, generally, that the board has been clothed with discretion, and they are supposed to have that discretion.

Q. Have you found any great number of men, people who simply

buy it for speculative purposes and hold it? A. I have not, I don't know that I ever knew of such a case. It may be; I am unable to answer that and say what a man buys it for. Generally we ask them and ascertain what they are buying it for. But it may be that some purchase with that idea, but I think it is very doubtful.

Q. In a majority of cases that property has been developed? A. Yes, sir.

Q. How long has it been since you made a valuable grant or lease? A. Our records will show when we made it. I think we have made some this year of considerable value. We had a large number of applications before us, and just which have been consummated and which have declined to take them I can't recall. Our secretary can tell you.

BY SENATOR MINTURN.

Q. In the case of these outside applications of persons interested in developing land in connection with the water front, are the applicants, as a rule, at the time the application is made to you, the owners of the upland, or are they simply speculating on that with the expectation of getting the water front first? A. They must be the owners.

Q. You say there are a number of instances where a number of these people have expected to develop the water front? A. They own the abutting water front. Why certainly, I can give you the names, and I would like you to bring some of those gentlemen before the Commission and interrogate them about the facts.

BY MR. DUFFIELD.

Q. Are you not in error when you say that he must be the owner of the upland; he must have the first opportunity, but if he declines the Commission has authority— A. (Interrupting) Yes, the owner of the abutting upland has the first option on the riparian property in front of his holdings. He may come before us and apply for the riparian property which is from high water mark out—not from low water—but from high water mark out to the line that we fix for solid filling, and byond that for pier heads.

BY SENATOR MINTURN.

Q. Where do you get that right? A. We think we get that from the law.

Q. I don't think it is in the law. I doubt the right of the State to sell the lands below the low water mark. A. We have done it and we think we have a legal warrant for it.

Q. I don't see it in the law.

MR. DUFFIELD.—I think, Senator, it will probably be more satisfactory to the Committee in the long run, if we divide the ques-

tion and find out what has been done, and then compare that with what the law actually is as construed by the court.

SENATOR WAKELEE.—I think the Senator was simply getting at what Mr. Cloke's idea was.

MR. CLOKE.—That is what we do.

SENATOR MINTURN.—My notion about it is that it is illegal.

A. There would be nothing to sell otherwise, such property would not be worth a pin.

SENATOR MINTURN.—That may be. I never understood that the state of New Jersey has done more under its decisions than to claim the land under high and low water mark, that is all the state has to sell. Now, you mean the state, or its agent, undertakes to sell anything more.

MR. CLOKE.—Who does own the land beyond low water mark?

SENATOR MINTURN.—The public, the state holds it in trust for the public and cannot sell it.

BY SENATOR WAKELEE.

Q. Can you suggest any names that you had in mind? A. I would refer you to the secretary and let him give you the names. I remember Mr. Frederick Seymour, of Wall street, a lawyer. He was negotiating for some property along the Hudson river for the use of a large concern. And there was a Mr. Martin, and a number of them up there. I don't recall the names, but the secretary can give them to you.

BY ASSEMBLYMAN REED.

Q. I understood you, in fixing the price for these leases, you fix the running foot front or square foot? A. The running foot; sometimes we charge acreage in addition where the land is valuable and where the exterior line is piered out; where it is shoaled, flat, mud flats, and the bulkhead line is a considerable distance out, he acquires a considerable holding, we charge in addition to the front foot, acreage.

BY SENATOR WAKELEE.

Q. Acreage in the water that will become land when it is filled in? A. Yes, sir.

BY SENATOR MINTURN.

Q. Have there been instances where the Riparian Commissioners have granted land not now under water but formerly under water? A. Yes, sir.

Q. Under what law is that done? A. I could not point you to the law, but we think we have a right to do it.

SENATOR MINTURN.—I call the Attorney-General's attention to that. That happened in a case which I was interested in, in the

city of Hoboken. It was in the Tunnel case, and they undertook to build their tunnel on what would be a prolongation of Ferry street, easterly from Hudson street, and that land had been filled in and used by the public. Now used by the trolley cars, and has been filled in for thirty years or longer. It was the McAdoo tunnel people, and when the city of Hoboken undertook to interfere with them for taking that prolongation of Ferry street, they set up a grant from the Riparian Commissioners to the Hoboken Land and Improvement Company of land under water, and another one behind it of land formerly under water, but which, at the time of the grant was filled in, made land in the actual occupation of the Hoboken Land and Improvement Company, and which they had granted as made land. On the same theory the entire land back to the hill could have been granted.

MR. DUFFIELD.—There seems to be something like that contemplated in the Act of 1871—whether it is constitutional or not—authorizing the Riparian Commissioners to make such grants, and it says: "Whereas, applications are frequently made to said Commission for grants and leases of lands which were heretofore, but are not now under tide water, and it is desirable to quiet the possession of those who so apply, but doubts having arisen whether such cases are now provided for by law; and it has been found by experience that grants and leases containing the grants and covenants authorized by the fourth section of the act, approved March thirty-first, one thousand eight hundred and sixty-nine, entitled 'Supplement to an Act entitled An Act to ascertain the rights of the State, and of riparian owners, in the lands lying under waters of the Bay of New York, and elsewhere in the state;' approved April eleventh, one thousand eight hundred and sixty-four; and the joint resolution of one thousand and eight hundred and seventy are more readily accepted, and are more satisfactory than those which do not contain the same," then it goes on to provide for the leasing of lands, and seems to contemplate leases for lands which have been formerly under water. I don't pass upon the constitutionality, but I simply say there does appear to be statutory authority.

SENATOR MINTURN.—Don't you think a statute of that kind is entirely foreign to the creation of this Commission?

MR. DUFFIELD.—I am at a loss to see how any of the statutes which provide for the leasing of these various lands are germain to the title of the original act which provided "to ascertain the rights of the State and of riparian owners in lands lying under the waters of the Bay of New York and elsewhere in the State."

SENATOR MINTURN.—I am not finding fault with the Commission.

MR. DUFFIELD.—It has been a source of wonder as to how this Commission has continued to act. That point was squarely raised before the Chancellor and the Court of Errors in this Central Railroad case, and apparently they didn't pass upon it. So that must be taken at present as an open question.

SENATOR MINTURN.—In this case I mentioned, it came before Vice Chancellor Pitney, where I raised the constitutional question. Ferry street runs from Bergen Hill to the Hudson River, and upon the theory of the Elizabeth case and that act there is nothing today to prevent the Riparian Commission granting all the land under Ferry street back a mile and a half to the hill and deprive the public of that street in the way in which the business is transacted.

BY SENATOR WAKELEE.

Q. If you make a grant so much per running foot, along the Hackensack, does your Board control how far the purchaser can fill in the river? A. Yes, sir; we fix the exterior lines to which he may fill in.

BY SENATOR MINTURN.

Q. I want to ask you a question: in fixing the exterior line of solid filling, do you take into consideration the rights of the United States Government? A. Yes, sir, sure.

Q. Do you confer with the Harbor Board? A. Yes, sir.

BY SENATOR WAKELEE.

Q. You make your line their line? A. Not always.

Q. Of course, you never exceed their line? A. No. Now, in regard to this land which has been filled in, formerly under water, which only occurs rarely, and when it does occur, it is usually for the purpose of quieting the title of some large concern that will not accept the title, and they come to the Riparian Board and say that they must have that cloud removed before this financial transaction can take place.

Q. In the case the Senator stated, it was not a cloud, it was the only grant? A. There was some little stream where we made this grant, where they demanded that the cloud should be removed. We made it for a nominal consideration. It was not navigable water and had not been for a long time, but at the same time these people felt they must have that little cloud off, so we made a charge, enough to cover the cost of making out the papers and perfecting the transaction.

BY MR. DUFFIELD.

Q. We have rather wandered from the point at which we started,

which was to ascertain what other methods and information the Board seeks beyond those you have indicated in arriving at the value. I don't think that was covered yet. In other words, do you call in outside assistance on the question of determining value? A. Do we?

Q. Yes. A. Not often.

Q. Do you ever? A. Yes.

Q. How frequently? A. Not frequently.

Q. How frequently have you done it in the last three or four years that you now recall? A. I should have to refer you to our secretary.

BY SENATOR MINTURN.

Q. Who makes out the deeds? A. The secretary.

Q. The closing of the whole transaction? A. Yes, so far as clerical work is concerned, he does it all.

Q. Who signs the deed? A. It is approved by the Riparian Commission.

MR. DUFFIELD.—Signed by the governor and the Riparian Commissioners.

BY MR. DUFFIELD.

Q. You have stated that a committee of the Board inspects the land, is that done with any great frequency? A. It is, it used to be done more. If we have a series of applications from the southern part of the State, we go and make personal investigation. In and around New York, on the Passaic, the Hackensack and the New York Bay; in these waters we usually send the secretary or a member of the Board, and he reports. That is frequently done.

Q. Is it not a fact that your basis of charge is largely based upon the report made by a member of the Board or by the secretary? A. He reports the conditions; for example he reports the situation there as to the upland; what is the land worth there, and what are the conditions there, is it valuable down to the water, or is it a marsh, or is the water in front deep or shallow.

Q. And except such investigation as is made by either your secretary or a single member, the Commissioners do not make any further investigation or produce any other witnesses before it? A. No, not usually.

Q. Can you tell us, Mr. Cloke, what efforts are made by the Board, if any, to collect the rental annually accruing on these various leases? A. None whatever; we have nothing to do with it.

Q. What do you do, report to the State Treasurer? A. Turn them over to the Treasurer.

Q. During the period that the Commissioners employed their own

counsel was any effort made during that time to collect the arrears of rentals? A. There was something of that sort then; I can't recall.

Q. What was it? A. I would refer you to the secretary for information upon that point.

BY SENATOR MINTURN.

Q. How long has the Commission had its own counsel? A. I think from the time it was instituted up to the administration of Governor Murphy.

BY MR. DUFFIELD.

Q. What compensation was paid him, if any? A. $1500 a year.

Q. As a general retainer? A. Yes, sir.

Q. Were the special services allowed any special compensation? A. I think not.

Q. It is a fact, is it not, that there are a large number of leases in which the rental has not been paid for a large number of years? A. I don't know, sir; the treasurer can tell you that.

BY SENATOR MINTURN.

Q. You mean the State Treasurer? A. Yes, sir; it is his business to collect those, we turn them over to him, and we have nothing to do with them.

Q. You keep no record of them at all? A. No, sir.

Q. What was the duty of the counsel when he was appointed? A. To attend our meetings and be in readiness to give us information on the various points that arose involving legal questions?

Q. He had nothing to do with the collecting of arrears, do you state? A. No.

Q. Did the board ever direct him to begin any proceedings to collect arrears? A. As I said a moment ago, I have a vague recollection of that some years ago. Mr. Payne can tell you about that, I can't because I don't remember.

BY ASSEMBLYMAN BARBER.

Q. The Board referred it to the treasurer as the one whose duty it is to collect any money in arrears? A. When a lease is made out by the Riparian Commissioners, their action in the matter is concluded; it is finished, we fix the price and make the lease. Then we turn it over to another department of the state, and that department is the treasurer, and he can tell you how well they are collected, how many won't pay and all about it.

SENATOR MINTURN.—We will have to have the state treasurer at a later day.

BY SENATOR WAKELEE.

Q. Has that always been the procedure? A. I am not sure about that.

BY ASSEMBLYMAN REED.

Q. What is the attitude of the Board in regard to fixing the price on the ocean front as compared with river front; in other words, do you make the price about the same as the assessment or valuation? A. No, the prices on the ocean front are governed considerably, in fact, almost entirely, by the value of the abutting upland, and the purpose to which it is devoted. If a man applies for some ocean front between Seaside Park and Barnegat Inlet, where there is nothing but mosquitoes and foxes, we would charge him very little for it, because there is no use to which it can be put. If they apply in Ocean Grove, we fix a price that we think is somewhat commensurate with its value.

BY MR. DUFFIELD.

Q. Going back to the question of leases which have been in arrears for a large number of years, are you familiar at all with the Annertt lease or the John L. Brownell lease? A. No, sir.

Q. Is it not a fact that during the period that the Board retained counsel that the custom was for the treasurer to return the leases which had been forwarded by the Board to him, to counsel, with the request that he institute proceedings for collection? A. I said awhile ago I had a vague recollection of something different from the present system, but I can't remember what it was, and in fact, it is quite indistinct in my mind. It seems to me it was something like that. You can get that information from others, but that is all I can tell about that.

Q. Your counsel was employed as general counsel for all purposes of the Commission? A. He was.

Q. And was it not one of the chief duties of counsel for the Commission to perform, to see that these leases were paid up or cancelled? A. Offhand, I should say I think not, because we never called upon you for any such purpose, we never called upon the Attorney-General's Department for any such duty. My idea is, that when a lease is made it is turned over to the treasurer and it is his duty to collect the rent and not ours.

Q. Will you suggest how the treasurer can collect the rent, except by legal proceedings, where a man does not pay? A. I don't suppose he can.

Q. Is it not a fact that during the time that the matter has been in our hands proceedings have been taken and a large amount of rent collected? A. Is it a fact, you say?

Q. Yes. A. I think it is; I think the treasurer has prosecuted these cases and collected the money.

Q. So that your suggestion that you have not called upon our department to take steps for the collection of arrears for rentals, or the cancellation of leases, is an error? A. No, sir; is it part of our duties to collect those rents?

Q. I don't think we will debate this question. I am simply asking you a question of fact which I think you can answer.

SENATOR WAKELEE.—Who did call upon you to do that?

MR. DUFFIELD.—As I understand, the proceeding has been the same both before and after the creation of the office of Assistant Attorney-General, when the legal matters of the Riparian Commission were made part of his duties; as I understand, the secretary of the Riparian Commission would annually prepare a list of leases upon which rents were due; they were transmitted to the state treasurer; the treasurer sent notice to the lessee, he would transmit to the counsel of the Board or the Attorney-General the leases with instructions to proceed. In fact, since the creation of our department a large amount has been collected on arrears for rent.

SENATOR MINTURN.—Can you give us the amount?

MR. DUFFIELD—I am not criticising the conduct of the former counsel, but merely stating the fact. The present situation is, that there are arrears running back, in some cases twenty and twenty-five years, and steps have not been taken to cancel those leases, so during the present year we prepared and had passed at the last session of the legislature an act which will permit the state in a simple way to retake possession of those lands, and I think now there will be no difficulty in securing a clear title to the state.

SENATOR MINTURN.—Would not the state have that right irrespective of that act under the terms of the grant?

MR. DUFFIELD.—Under the terms of the grant it undoubtedly would in an action of ejection, but the difficulty would be this: Having run for a great many years, the original lessees have disappeared, their heirs have vanished, and it is difficult to find anyone against whom you can bring an action of ejectment, because the land was probably deserted.

SENATOR WAKELEE.—Will you take it upon yourself to get the treasurer of the state to attend here and give information about this.

ASSEMBLYMAN BARBER.—This course of procedure where the Attorney-General takes steps to collect these arrears, that is a matter of custom, there is no statute which puts that obligation upon the Attorney-General?

MR. DUFFIELD.—None, except the statute creating the office of Assistant Attorney-General, which provides that all Commissions shall have as counsel the Attorney-General, and we conceive it to be a part of his duty.

ASSEMBLYMAN BARBER.—Then there is no law at the present time which makes it obligatory upon the Riparian Commissioners or the State Treasurer to institute proceedings?

MR. DUFFIELD.—None; the duty of the Commission is to report to the Treasurer, annually, the leases upon which there are arrears due; that has been done. Then the State Treasurer has conceived it to be his duty to make such an effort to collect, and has reported back to the counsel the list, with a request for collection. I may be in error about that; I am speaking merely from hearsay. I would say, Mr. Barber, that under the present law, which was passed last winter, it was made obligatory upon the Treasurer to report to the Attorney-General a list of the leases, which, in turn, it is made obligatory upon the Commission to report to him, so that the Attorney-General may be apprised promptly of the condition of these leases. Mr. Backes informs me that is the fact. I would like to produce that law after recess, because I think that clears up the situation, and shows the evil which we were endeavoring to meet, and also the remedy which we are attempting to apply.

SENATOR MINTURN.—Will you supply the Committee with a list of the arrears, not only now, but as they stood at the time you received them from the Treasurer?

MR. DUFFIELD.—I think, possibly, the Treasurer would be better prepared to do that, and I will try to have it prepared by the next meeting.

SENATOR WAKELEE.—It being a State department, perhaps a motion on the part of the Committee would be the way to arrive at that.

SENATOR MINTURN.—I move you that the State Treasurer be requested to prepare full information for submission to this Committee of all matters relative to returned leases now in his hands or in his office.

Which motion was seconded and carried.

MR. DUFFIELD.—I would suggest that we add "And also all cases reported to the Attorney-General."

SENATOR MINTURN.—I will include that in the motion.

The motion as amended, was then carried.

MR. DUFFIELD.—I think that is all, Mr. Cloke.

BY SENATOR MINTURN.

Q. There was one question I wanted to ask you: where an appli-

cation is made to you by the owner of the uplands for conveyance of lands under water, and that application includes a conveyance of the land immediately in front of a city street, what is the practice of the Commission ; does the city receive notice of that application, so that it may protect its interests, or is the grant made without notice to the city? A. If there is any party in interest in any grant that is applied for, we always notify them, whether it is a city or any other municipality, or a private party.

Q. I had in mind certain streets in Hudson County, where grants were made by the Riparian Commissioners immediately in front of the city street running to the water—a grant made to the owner of the upland on either side of the street without any notice to the city. A. We don't notify a party unless they have some interest.

Q. You consider that a city has no right to continue its street down to the water front where it is laid down on the map as carried to the water front? A. The applicant for a riparian grant or lease must be the owner of the abutting upland. Now, if the city is the owner of the abutting upland, we would notify them ; if the city was not, we would not notify them any more than any other citizen of New Jersey would be notified.

Q. Then take a street now running down to the Delaware river in Trenton ; say this street adjoining the State House ; on the map of the city of Trenton it is carried down to high water mark on the Delaware river ; the owner of the land between that street and the next street adjoining, applied for a grant of the land in front of his upland, but he also includes in that application the additional land in front of the said street ; you consider under the application the city is not the owner of the upland so as to be entitled to notice? A. It would depend entirely upon the facts.

Q. There are the facts. A. We would consider the facts; nothing else would go with us but the facts.

Q. It has not been considered in a number of cases that I know of. A. I guess if you will look into them carefully, you will find that they were decided entirely upon the fact, in compliance with the law.

Q. What I want to get at was, whether the construction of the law by the Commission was that the city was not the owner of the upland within the meaning of the statute in a case of that kind? A. If they own down to the water, you mean?

Q. Yes, the city has a street running down to the water. A. If the city was the actual owner?

Q. By owner I mean a public right of way to the water? A. That is a different thing.

Q. You consider then, that the right of way does not give the public any interest in continuing that street on any land between high and low water mark, is that the construction of the Commission? A. I think I would decline to answer that, because I am not well enough informed just at this moment; but I only say generally, that we do not make a grant to anybody, to a municipality or anybody, unless they are the owners of the upland, and if they are, nobody else can get it without six months' notice.

Q. They are the owners in that they have the use of the land; nobody can eject the public from the street; that while grass grows and water runs, the public have the right to go to that water. Now, then, does your Commission, when the owner of adjoining lands applies for the lands in front of his lands, does it notify the city of the application? A. If the city has any claim as owner of the ripa.

Q. That is arguing in a circle. A. If the case comes before us we inquire of the party making the application and compel him to prove that he is the owner of the ripa, and no grant would be made in front of a city street unless upon actual proof.

Q. How can a man who makes application for land under water consider himself in fact or in law the owner of the ripa? A. I don't know; that depends upon—perhaps in your legal experience dedications of streets are made under certain conditions and differ; you can't lay down a general rule.

Q. Do you examine into the facts? A. Certainly we do; I said, and I reiterate, no person can secure a grant in a street unless they prove to us, documentary proof, that they are the owners of the upland.

Q. An application is made in this wise to the Commission today: John Doe owns land between First and Second street, Trenton; both of those streets run to the Delaware river. He applies for the land in front of his land between those streets, naming them as streets, and they run to the water; he also applies for land immediately in front of those streets. Now, public notice is given to you by the application itself, in which he names those two pieces of land as public streets. Does your Commission, after receiving that notice from the very application, ever notify the public that John Doe expects a grant in front of a public street? A. Undoubtedly; we do it in numerous instances.

Q. Have you ever done it in a case in Hudson county? A. I don't recall.

Q. Were you in the Commission when an application was made by

the Hoboken Land and Improvement Company for land under water in front of Hudson Square park, during the time of Governor Green? A. No, sir.

Q. In that instance an application was made by the Hoboken Land and Improvement Company for land under water, not only at the ends of the streets in Hoboken, but for the land in front of Hudson Square Park, which is a public park running down to the water front, dedicated on the map laying out the city of Hoboken by old Colonel Stevens. A grant was made by the Riparian Commission of that land 200 feet on the river front, and was in the hands of Governor Green ready for signature before any notice whatever reached the public that any such grant had been made, and then it reached the public only through me, by accident. Do you think that system is proper? A. No.

Q. Would the Commission today under its process of granting lands, make such a grant as that? A. Certainly not; not without notifying the municipality. We very carefully guard the rights of the public in those particulars.

Q. I have in mind now some grants made by this Commission, I don't know whether in your time or not, down in Toms River, where public streets were shut off in the village of Toms River, without any notice to the village authorities; have you any knowledge of those? A. I don't recall them.

Q. But if such grants were made you would consider them improper, without notice to the legal authorities? A. It would depend upon circumstances. If the applicant proved convincingly that he was the owner of the ripa, we notify nobody.

BY SENATOR WAKELEE.

Q. What is your judgment upon the present statutory law covering the question of riparian matters in this state; do you think we need some more law or a revision of the law? A. I don't know; I think we have got about law enough.

SENATOR MINTURN.—I think we need to repeal all of them.

BY SENATOR WAKELEE.

Q. I mean from your experience? A. My experience is, that under the present system it is operating very beneficially to the people of New Jersey; we are developing our shore front and luring capital to the State. There have been enormous developments along the kills in the last three or four years; great interests have come from other parts of the country, and if we should make a violent change in the system, I doubt whether it would be expedient. My own view is that the present system is operating to the best interests of the people of New Jersey. It is developing the

shore front and bringing money into the school fund. I don't see any advantage to be gained by a change in the system.

BY SENATOR MINTURN.

Q. When all that land has been sold, and there will be no more money to come into the school fund, what will become of the school fund? A. The school fund is invested.

Q. There is a draft on it all the time? A. I know how much—$200,000 a year.

Q. But there is a public to come; generations to come. A. Let me say just this, there has been a great deal of talk, misapprehension about the importance of this riparian fund for the school fund. The total amount that the invested school funds pay into the public school fund for a year is about $200,000; that comes from the accumulated leases and grants of the Riparian Commission, and maybe from some other sources. Now, that is not a drop in the bucket.

SENATOR MINTURN.—By the way, Mr. Attorney-General, can we be supplied also with the number of leases out-standing as compared with the grants?

A. There is paid $200,000 out of the school funds, out of these invested moneys; that $200,000 a year is merely a drop in the bucket. The State itself raises and dispenses about three millions, in round numbers; $2,900,000 is paid out of the treasury, and the rest collected in the shape of State taxes. In addition to that, the various communities and municipalities tax themselves for the support of their schools, so that the total amount that was paid for the support of the public schools is about ten million dollars, of which the Riparian invested fund contributes $200,000, 2 per cent. There has been a great deal of misapprehension. It has been talked of as though the riparian fund had been the main support of the public school fund of the State. That is ridiculous; it is an advantage to get all that we reasonably can out of these riparian grants, I grant you that.

Q. I have never yet heard an argument made in support of the riparian theory in giving away land, other than that it was for the support of the public school fund, and that there would be a hue and cry in the state if any other theory was adopted. Have you, in your large experience, given any thought to the subject whether the state would profit more by leasing the land than by selling it? A. We have had the question before us time and again. One year during our term we induced the Governor to urge it in his message, that all grants be prohibited and that only leases be made thereafter, and the Governor did so.

Q. Who was that? A. I think it was Governor Voorhees. It at

once raised a great clamor, at least very strong opposition from the great patrons of the state, the railroad companies and other large concerns that are the patrons and purchasers of this riparian property, and large industrial establishments, and men in commercial pursuit, protested vehemently against any such policy. They said they would not invest money in making costly improvements in lands that did not belong to them, with the chance of being soaked at the end of twenty or twenty-five years—whatever the term might be. That when they developed this land along our water front they wanted to be the owner of the property in fee, or they would not feel like using them for the purpose for which they wanted them and put large plants there ; and we abandoned the idea, the Legislature abandoned the idea.

Q. Was there any other factor in that argument in that direction except the railroads ? A. Yes, a great many; you will find, if you, as I suggested, notify some of these gentlemen that are now would-be customers of the state. I merely call your attention to what they would say about it. I think generally the sentiment of those who want to put permanent and costly improvements on our water front is that they could not do it on leased lands, with the chance, as I said before—using a common word—of being soaked at the expiration of the term.

Q. Don't you think if these conveyances were made by leases for 25 or 50 years, and then re-valued at the end of that period, exclusive of the improvements upon them, by the commissioners, not by anybody who would soak them—but by the commissioners who originally made the grant, that that would be fair to the state and fair to the men applying for the grants ? A. I don't think the men applying for the grants would think so. I think they would say that in a course of 25 or 50 years there may be such developments in the value that it would double or quadruple, and I have got my plant there and cannot get it off, and I am stuck.

Q. Is not that the case of the ordinary man who rents a piece of land and puts an expensive building on it ; doesn't he run the same risk ? A. That is up to him.

Q. There is nothing wrong about it ? A. No, it is only a question of public policy.

Q. Is it not a fact that the city of London is built on leased lands ? A. That I can't answer.

Q. Is it not a fact that most of lower New York is leased from Trinity church, and the most expensive kinds of buildings on it ? A. It depends upon the conditions and terms.

BY MR. DUFFIELD.

Q. What was the reason that led your Commission to urge upon Governor Voorhees the passage of this law? A. I will tell you. There seemed to be a general public demand for such a change, and so we yielded to it and asked the Governor—we suggested in our annual report to the Governor that such a change would prove beneficial.

Q. My thought is, that your Commission at that time must have been of the opinion that such a change would be beneficial to the state. A. I think we did think so, but we very soon got up against it and found it was not.

Q. You haven't any serious doubt that at least the most valuable portion of our water front would always have a certain market, whether by lease or grant, have you? A. What is that?

Q. Take the Hudson River front; it would always have a market value for leasing, even if you were not authorized to make grants? A. We could lease it?

Q. Yes. A. Well, perhaps so; it would depend; it would retard development.

BY SENATOR MINTURN.

Q. With particular interests; but it would always be in demand by some interests? A. No, I think not; the owner of the upland would be the man that controls. I point to a case of a man who came before our board within a year, an actual case, who said, "I want to locate a plant there, I own the upland; I want to locate a large establishment there; we have"—I don't know how much. It was a tremendous concern. We fixed the price and he would not take it. He said, "We can't locate on the land, because we can get it cheaper somewhere else." I don't know that this applies exactly to the question you were asking as to leases, but I think, generally, so far as my experience or knowledge goes, that a man or corporation that contemplates investing a large amount of money in the development of any of our shore properties, would not do it under the leasing system; if he did it would be temporary, and a less costly plant. He would not put on permanent and costly improvements; he would put up a makeshift concern to accommodate temporarily.

Q. Suppose there were restrictions, as the State is restricted now by riparian legislation from leasing the land between high and low water mark to anybody but the owner of the ripa, would not that be protection to him for all time? I can understand that the State can seel to any Tom, Dick and Harry that comes along; but here is a statute that the owner of the upland, and he alone, for six months,

shall have the privilege ; how is he liable to be so soaked ? A. At the end of the term.

Q. To have an increased value put upon that land ? A. Yes, sir.

Q. In other words, there is a natural increase to riparian land as there is to other land ? A. Well, of course.

Q. In other words, lands which the State leased twenty-five years ago, if they were in the State's possession today, they would never think of leasing for the price then placed ? A. I should think not.

Q. And it is the idea of the man purchasing, in your view, that the natural increase will be such that he would probably, at recurring periods, be obliged to pay a larger amount than he was twenty-five years ago ? A. I think it is the uncertainty in large financial transactions ; you could not get men to invest money under those circumstances, there is the chance.

Q. You surely don't think that, taking the water front along through Jersey City and Hoboken and so on up through the Hudson River, you surely don't think there would not always be an active demand for such lands whether on a limited period lease or whether on a grant ?

SENATOR WAKELEE.—I can answer that question. There is lots of land even at a low price that is not taken up.

A. There are miles that nobody wants ; at least they don't take.

BY MR. DUFFIELD.

Q. The point I am trying to bring out, there are certain lands which would probably be difficult to dispose of on any method ; but there are certain lands which can be disposed of on limited leases, and by reason of the statute, or the action of the commissioners, all riparian lands are grouped under one head. We have no means of leasing our valuable lands for a limited period.

SENATOR WAKELEE.—Is not the reason that they are worth more because of the fact that these improvements have been made ? I know of a case in Bergen where there were miles of water front that nobody would take. This one concern was induced to come there and did come, and employed thousands of men, and has brought millions of money into the state, and with the result that all the riparian land along there is more valuable because of this plant.

MR. DUFFIELD.—My thought was, that possibly the situation was such that there ought to be a discretionary power conferred upon the Commissioners ; where, for instance, a plant such as you have described has come there and others have followed, and the land which has been of no value has become valuable, so that the remaining shore front dotted along there, becomes valuable—that they

can then change their method and lease for a limited period. It would be for the benefit of the state to induce large enterprises to come, but they should not be limited to two methods of granting.

SENATOR WAKELEE.—I think that would be well.

Q. There are riparian lands for which there would always be a demand? A. Some lands are active and others are dormant. The active property bears but a slight percentage compared with the entire holdings of riparian lands in New Jersey. Mr. Payne has some data on that.

Q. Unquestionably; take an illustration; it would be impossible to adopt a leasing system of land in a sparsely settled community; unquestionably, land in lower Broadway, New York, could be disposed of on a leasing system. Now, is it not true that there are lands owned by the State at the present time, which, under a limited lease system could be easily disposed of, while there are lands which it would require an absolute grant to bring into the market? A. We are vested with that discretion; we can grant or lease.

Q. Your lease contains a power by which a grant can be obtained; you have no power to lease for a limited period? A. I don't think we have, although I am not sure about that.

SENATOR MINTURN.—The original act was entirely for leasing; the grant was an after thought.

MR. DUFFIELD.—Even under the original lease it was a perpetual lease?

SENATOR MINTURN.—Yes.

Q. In any event the state parted with its title as long as the lessee complied with his contract. There is no law permitting them to make leases for twenty years? A. I think that might be a very reasonable provision, that the Board power might be extended to that extent, that we might have the discretion of making a lease for a limited period, and if we could do it, why all right, but I think it would be a mistake to tie our hands and say—if a large concern comes to New Jersey and say they want to come in and locate a plant worth two millions of dollars, and give occupation to a thousand men, and we will only take a grant, and if we can't get it we will go to Connecticut—to say that we could not make the grant to him under those conditions would be a mistake, and it would drive a great deal of capital away.

BY SENATOR WAKELEE.

Q. Inasmuch as Jersey does not control all the water front, we have to regulate ourselves according to the general supply and demand throughout the country? A. Sure, I think so, and the general public development of the state has to be taken into consider-

ation—not merely the few dollars we get and turn into the state treasury, to develop our shore front interests.

BY SENATOR MINTURN.

Q. You mean the immediate welfare? A. Well, the permanent welfare. I think that our cities are built up on our navigable waters by reason of the fairly generous policy that the state has pursued, and certainly it is a great advantage to have these waters built up; take the Kill von Kull, and the mouth of the Raritan river; great concerns have been located there which have added enormously to the taxable value of those localities, and generally to the advantage of the whole state. It brings a good deal of enterprise into the state.

Q. There is the unearned increment—if that is what Henry George calls it—in this water front land that the public should come in for, or will be entitled to get the benefit of, in the way of increased values, or unearned increment, and I think a lease will bring that about. A grant, while it may give the present inhabitants of this section of the earth all the benefits that we are looking for, we want to look after our children, and, therefore, I am opposed to the grant, as I am at present inclined to think. Of course, I look to men like you for information on this subject, but I am led to believe that the absolute grant is unwise. A. I think, Senator, that our children will derive a very substantial advantage from the fact that this shore front is built up and occupied by substantial concerns. It is a good deal better than if they were mosquito flats, caused by the state drawing its door latch in and saying, "Go elsewhere;" and, although at the end of twenty-five years we might get a larger amount, in the meantime, we would be losing all the advantage of the development.

Q. I was down on one of these Hudson river piers not so very long ago, probably two or three years—before I ever thought of coming to the legislative halls, and I met the former counsel of your Board. A. Where?

Q. Down in Hoboken; we were going to some dinner on a transaltantic steamship, and I said "What a shame it is that all these valuable lands should ever be given away without any notice to the city." We were then standing on a pier which was practically part of the city street; and I said "How in the name of heaven are we ever going to get it back?" "Jim," he said, "we will tax it back." Which, in your judgment is the better way, to make an out and out sale by way of lease to these people, or employ the agency, the immense and sometimes arbitrary and unreasonable force of taxation

to tax it back in the course of generations to come? A. I don't quite comprehend.

Q. Do you think that the future generations can get more out of this land granted absolutely now by the State Board of Riparian Commissioners, by a system of taxation hereafter, than they can by the increase, the inherent increment, in the value of the lands, which they would obtain necessarily by a lease made now and renewable in twenty-five or fifty years; do you think that is a more just or wiser policy? A. I think making the grant now, if a man applies for the property, make that a condition. If he says, "I will take the land as a grant and locate a plant there costing a large amount of money, and give employment to a large number of men"—increasing the taxable valuation of that locality—if he says, "I will only take a grant or otherwise I will go to Staten Island or Connecticut or New York," I should say make the grant.

Q. Do you think that the Riparian Commission should be influenced entirely by the threat of that man at that time, and make a grant for fear that he is going to Staten Island or Coney Island or Connecticut, or some other place to locate? Don't you think that somebody else will come and demand that land, if not now, then in the near future? A. Assuming that to be the fact, assuming those to be the conditions, my judgment is that the grant should be made. If he will take it on a grant and develop it, and won't take it on a lease, I say make the grant. Therefore, my conclusion is as before, I think, the Board is now invested wlth discretionary power, and we can grant or lease, and we prefer to give a lease.

Q. You do prefer to give a lease? A. Yes, sir; it returns 7 per cent., and very few people will lease it, but if we can we are very glad to do it.

Q. But you think an arbitrary act preventing you from doing anything but leasing would be an unwise policy? A. Very injudicious, in my judgment.

Q. That is all.

At this point a recess was taken until two o'clock.

MR. DUFFIELD.—We discussed to some extent the questions as to the authority of the Commission under the present law to lease for a period less than perpetuity—a grant or lease which might be converted into a grant. Apparently; Section 4 of the Supplement approved March 20, 1891, provides for that, and such power is now vested in the Commission. That statute provides: "That the Riparian Commissioners, or a majority of them, together with the Governor, shall not hereafter be required to give leases for lands of the State under water, convertible into grants upon payment of the

principal sum mentioned therein, but may sell or let any of the lands of the state below mean high water mark, upon such terms as to purchase money or rentals, and under such conditions and restrictions as to time and manner of payment, the duration and removal of any lease, the occupation and use of the lands sold or leased, and such other conditions or restrictions as the interest of the state may require, as may be fixed and determined by said Riparian Commissioners, or a majority of them, together with the Governor."

Which seems to cover the point I have in mind. I am frank to say that I was not familiar with that section. I don't think that power has been generally utilized by the Commission, and it may be well, in order to get that in the record, to recall Mr. Cloke.

SENATOR MINTURN.—Mr. Payne can speak of the same thing.

MR. CLOKE.—We had that question up before the Governor, the bill introduced in the Legislature covering those grounds, and I called the attention of the Governor and the members of the Commission to that section. It seems so broad as to leave nothing to be desired on the point of amendment.

JOHN C. PAYNE, sworn. Examined by Mr. Duffield.

Q. Where do you reside? A. Jersey City.

Q. You hold an official position with the Board of Riparian Commissioners? A. I am secretary and engineer for the Riparian Commission.

Q. You held one of those positions prior to the joining of the offices? A. Yes, sir.

Q. What was that? A. I was secretary and assistant engineer before I became secretary and engineer.

Q. How long have you been connected as an official with the Riparian Commission? A. I think about thirty years.

Q. The office of the Commission is in Jersey City, is it now? A. Yes, sir.

Q. And has been ever since your connection with the Commission? A. Yes, sir.

Q. All the records of the Commission are kept there, are they? A. Yes, sir, with the exception—yes, sir, all the records of the Commissioners are kept there.

Q. What records do the Commission keep? A. They keep the applications as filed; they keep a record of the action of the Board on those applications; they keep copies of the grants or leases, if

such are issued in response to such applications ; they keep the minutes of the Commission ; they keep the records at length of all the grants or leases that are issued, in libers ; and they keep a detailed statement or history of each case as to the action of the board and action of the applicant ; also keep copies of all letters written, and keep the letters in reply ; and also keep maps, both working maps on which the work of determining the dimensions of the grants are worked out, and also general maps of each county on which a record of the grant is made.

BY SENATOR MINTURN.

Q. Are the minutes in book form ? A. Yes, sir.

BY MR. DUFFIELD.

Q. Have you any system of indexing these records, so that anyone can find out the action of the Board on any particular matter ? A. Yes, sir ; I think the office is so arranged that a stranger can come in, and by having the index pointed out, or finding the index, can become familiar with the entire matter.

Q. They are public records ? A. Yes, sir ; and open and used by the public frequently. The Title Guarantee companies send to the office either a representative, or requests by mail as to information whether grants have been made as to land under water, which they use in their search of title.

Q. Before making any grant, and before determining the amount to ask, it has been the custom of the board to consult with you in regard to it ; I mean in conducting the preliminary investigation which enables the Board to pass upon it ? A. The clerical work of the board is performed by me, of course. I don't know that I understand you, but the procedure is strictly as stated by Mr. Cloke. An application comes into the office, and their reply is sent giving the applicant the information that the Board will meet at a certain time and consider the application, and an offer of any further information that may be required. Then, it is the duty of the secretary and engineer to locate that property and ascertain all the facts, for presentation and consideration of the Board, which is then done.

Q. In gathering this information, you make investigation in regard to the valuation of the land ? A. Not before the application is presented. When the application is presented, if the Commission are not familiar with the locality, or with all the circumstances attending it, they appoint a committee usually, and usually, for the purpose of surveying or locating the property, the engineer accompanies that committee, and, also, under the direction of the Commission, the secretary ascertains such information as they desire, as to location and other facts.

Q. It has been your method, Mr. Payne, to ascertain information regarding the valuation; what do you consider in that matter? A. Under the direction of the Commission I have inquired of real estate men, and have ascertained from assessments and from sales and from conversations with men familiar with that subject, as men will naturally become familiar with it through long series of years—and after getting the information desired by the Board I report it to them.

Q. One of the first things that is necessary for the Board to ascertain is in regard to the ownership of the adjoining lands? A. Yes, sir, the application is predicated on the ownership by the applicant of the upland. With his application a brief of title is presented, and an examination of that brief of title where there is any question about it, and in fact, the whole theory of the preparation and delivery of the grants and leases is that they should be passed upon by the Attorney-General's office—by your office. In a number of cases there are minor questions that from well-known practice and precedents of the action of your office, it has not been necessary under your advice, to refer them to your office, but that is only because they are one of a great number of similar cases. After the papers are prepared the applicant is then notified that the grant is ready, and upon the receipt of the consideration by checks to the order of the State Treasurer, the grant is delivered.

Q. Senator Minturn asked Mr. Cloke a question that I don't think was definitely cleared up, in regard to the treatment of a municipality where an individual owns land on both sides of the street; whether it has been the custom of the Board to treat the municipality as the owner of the street and give it notice of the application to purchase? A. That is practically the invariable rule of this present Commission and has been for a number of years. It works out in this way: if an applicant includes in his application a request for a grant of land under water at the foot of a street, it is the almost invariable—it is the invariable practice of the Board to refuse that grant, if he then persists, on the ground that the municipality is the only proper person to apply for that grant. If he persists in his application the board directs him to furnish the evidence of his claim, the basis of his claim, and then notifies the municipality that such a claim has been made, and request them to present their position in the matter. On receipt of both of those presentations they are referred to your office for your consideration and conclusion. No grant is, however, made to an individual for land under water in front of a street, without that formality having been gone into.

BY SENATOR MINTURN.

Q. How long has that been the practice of the Board? A. Six or eight, if not more, years.

Q. Prior to that, grants were made? A. Prior to that, grants were made to individuals of land under water at the foot of streets, not, however, when—a great many years ago it is likely grants were made to individuals of land at the foot of a street without notice to the municipality; then later, some notice was given in cases, but it was not as carefully observed as it has been for eight or ten years. There are cases where, unwittingly, perhaps, land under water in front of what is not notoriously a street, but that has some existence on the map, and afterwards a claim is made by the municipality or somebody interested, that land has been granted in front of that street. The Commission further, in the form of the grant, protect the municipality in that it states that if at any time is adjudged not to be the owner of the ripa, the grant fails as to that part. That has been the practice for a great many years.

Q. Is that contained in the deed? A. Yes, sir.

SENATOR MINTURN.—Have you a form of deed here?

MR. DUFFIELD.—No, we haven't one here.

BY MR. DUFFIELD.

Q. We were discussing this morning as to the form of this grant, won't you tell us just what it was in untechnical terms, what the grant is, and what is the form or nature of the grant which they make? What is the grant which they make, and what is the tenure for which they give it? A. I think there is a question of legal interpretation, but as I understand it, and as I think the commission means to grant, it is in form of a grant in fee; it grants to the applicant, who is at first judged the riparian owner, the right to fill in solid from high water line out to the exterior line for solid filling; and then erect piers from the line for solid filling out to the exterior pier line. There is a modification in that form of grant, that has developed, or been brought to the attention of the Commission by an act of the court in a suit, in the case of Holmes vs. Bateman, where the regular form of grant was adjudged to be a bad grant, not to give the grantee any rights in the land under water until he had filled it in, but that the Commission could have made such grant if it had so worded it. So there is a slight modification in the grant to meet the decision of the court in that case. The leases, I believe the Commission intend them to be a grant in fee as to all the rights and privileges, but that has been stated by the chairman of the Board. Simply a rental is

charged upon the principal sum, which may be converted into a grant at any time, and under the form, as stated in the lease.

Q. As a matter of fact, so far as you know, have there been any leases made for a lesser period than perpetuity? A. Unless you would call a license—there have been in isolated cases a license, a yearly license revokable at the pleasure of the Board made.

Q. But, so far as you know, there have been no leases made except in the form of perpetual leases, which have been made at an annual rental on a basis of fixing the sum which may be paid at any time, thereby converting it into a grant? A. No, I don't believe I know of any lease that corresponds to anything but the regular lease.

Q. Have the Board ever taken any action in regard to the collection of arrears of rentals; has that matter ever been acted upon by the Board, so far as you know? A. I remember a great many years ago, when Mr. Bacot was secretary and engineer; my recollection is that the Attorney-General was then under the law a part of the Board. I remember as far back as Mr. Gilchrist's time, when he was Attorney-General, and a grant was not operative except on his sanction; and I remember also, indistinctly, that Mr. Bacot would take some means, or was concerned in the payment of the rentals, but not within the last twenty years, and I don't remember that the Commission ever took any action in the matter of the collection of rentals, and, as has been stated by Mr. Cloke, it is, I have no doubt, the opinion of the Board that it has no authority or power, and it has no knowledge whether the rentals are paid or not. Some years ago, I think the Chairman of the Board has that in mind—some years ago the then Attorney-General, John P. Stockton, was, either through the agitation of the fact of so much rental having accrued and was unpaid, at any rate, started suit to recover either the land or the rentals, and because it was inconvenient to obtain some information that was necessary in the preparation of his legal papers from the Riparian Commissioners' office—or Mr. Record's—the cases were referred to Mr. Record, under Attorney-General Stockton's action, as lawyer to collect, but not through any action of the Riparian Commission, and independent entirely, and the Attorney-General paid whatever expense and money there was connected with that.

Q. Mr. Record was counsel for the Board how long? A. Why, I think six or seven years.

Q. Was there any regular counsel for the Board before Mr. Record? A. No, sir, before Mr. Record's appointment there was an attorney selected in all the riparian counties, and to them were

referred the applications and the briefs of title for examination and preparation of papers.

Q. Prior to Mr. Record's appointment did the Attorney-General act as he does now, as legal adviser for the Board? A. I imagine that is true, although I have no distinct recollection, although I think I have recollection that in legal matters the Attorney-General was the adviser of the Board. Although I remember a case where the Riparian Commission brought suit against a trespasser and the Commission was represented by its local counsel in Hudson county, who was then James B. Vredenburgh.

Q. But prior to the appointment of Mr. Record, there was no general counsel of the Board? A. No, sir.

Q. Upon Mr. Record's appointment, he acted as general adviser? A. Yes, sir.

Q. The Attorney-General was called in in case of supreme importance, or cases where it was thought wise to have the State represented? A. Yes, sir, the Commission in some cases would refer the matter to the counsel of the Board and the Attorney-General for advice.

Q. And since 1904 the Attorney-General's department has been acting as counsel for the Commission? A. Yes, sir; sole adviser.

Q. Now, you have said that the Commission had nothing to do with the collection of arrears of rental that was turned over to the Commission annually? A. No, sir; Mr. Cloke has correctly stated the action or the practice of the Board. The lease, when made, the lessee is notified, and a check for the semi-annual rental is sent to the Commissioner's office, and one lease is sent to the lessee, and the check and the duplicate is sent, with the address of the lessee, to the State Treasurer, and the Commission have no further knowledge of the transaction.

Q. As to whether the rentals are paid or not? A. No, sir.

Q. After that it becomes merely the duty of the treasurer to collect the rentals? A. I think that is the understanding of the Commission.

Q. And, therefore, you pay no attention whether the rentals are paid or unpaid? Q. No, there is no record in the office.

BY SENATOR WAKELEE.

Q. If the lessee desires to change his lease into a grant does it then come back to the board? A. Yes, sir—I thought you meant assign it—if the lessee desires to convert his lease into a grant he sends in his application to the Riparian Commissioners, upon the Riparian Commissioners granting that application, a conversion, as it is called, is prepared and executed, and the State Treasurer's

office is then inquired of as to what rentals are due and unpaid up to the time the grant is converted, and the applicant is notified and sends his check for that amount, and the grant is delivered to him and the check sent to the State Treasurer, which terminates the lease.

Q. How about an assignment? A. An assignment of lease may be made, and it is usually made in the State Treasurer's office. The fact of the assignment is made known to the State Treasurer ,and I understood, although I have no definite knowledge of it, that he looks to the assignee for the collection of the rentals after that time?

Q. But you have no knowledge as to that? A. No; and when an application comes in for a conversion of the lease, the Commissioners require that the applicant shall show and state by affidavit that he is the owner, or the chain of title by which he comes into possession, and the lease has a clause that if he is not the owner of such title as was conveyed by the lease the conversion fails.

BY ASSEMBLYMAN BARBER.

Q. If a lease is granted, is there any consideration given in fixing the value, to the proposed use of the land; does that affect the valuation at all, or is that not considered? A. How is that?

Q. Suppose land is granted, do you examine the proposed use to which the land is to be put, take that into consideration? A. I would say in answer to that, that that ground was fully covered by the chairman of the Board, and I can only reiterate what he has stated, that it is the practice, and it is within my knowledge that the Commission inform themselves both by examination of the locality, by examination of men competent to give information; and by personal inquiry of the value and inform themselves, and reach conclusions in that way, as Mr. Cloke has stated.

Q. The point I want to get at is this: if a party takes a lease, that party may assign that lease to someone else without having the sanction of the Board at all? A. Yes, sir.

Q. Then the purpose to which the party may put the property may be something quite different than that which the original grantee represented, to which it was to be put? A. I think that might be true, as there is nothing in the lease that makes the use to which it is to be put a consideration in the transaction. I think that is true.

BY MR. DUFFIELD.

Q. Going back to the question of these unpaid rentals, and not with a desire to criticise the Riparian Commissioners or the Attor-

ney-General's office, or the Treasurer's office, but to disclose to the committee the reasons that have permitted a large amount of rentals to remain unpaid without going into possession ; what method, if any, is provided for carrying out the provisions of the lease, that the State of New Jersey may re-enter in case the rental is not promptly paid ; as far as you know, is there any person lawfully assigned, or is that duty imposed on anyone? A. I have no information upon that subject, except that the inference which I believe is in the mind of the Commission, that when the lease is turned over to the State Treasurer that he is responsible, or rather, that he is entrusted with the carrying out of the lease.

Q. The understanding of the Commission is, that their sole duty is that of executing leases, and when they have once been executed their connection with the whole matter ceases? A. Yes, sir; that is my understanding of the attitude.

Q. So that there is no one charged with the duty of re-entering or re-taking possession of these lands which have become forfeited by non-payment? A. I think it is in the minds of the Commission that the State Treasurer is the officer who alone can do that. He is notified when the lease is made ; he is sent the first six months' rental and a duplicate lease, and that lease states that it is a condition of the lease that the rental shall be paid in advance on certain dates, and I think it is in their minds that it is his duty and privilege to see that the terms of the lease are carried out, in order to collect the rentals that are to be paid to him.

Q. So far as you know, has there been any case where the lands leased have been re-taken by the state and leased to other parties? A. I think in some cases that I have referred to, taken up by Attorney-General Stockton, they were carried to a conclusion by Mr. Record, and the cases were cleared up, and the state's title was re-established to the land under water. I don't think any of those lands happened to have been made the subject of a lease, and in a great part, because most of those lands happened to lie along the Hudson river, they have since been appropriated by the State Park, the Palisade Park Commission, and no sales have been made along that water front since that time.

BY SENATOR MINTURN.

Q. How long has the provision about the ownership been in your deed? A. Providing if the applicant is not the owner?

Q. Yes? A. I can't say ; the forms of the conveyances have changed from time to time under the advice of the different Attorney-Generals, and the differing notions of succeeding Commissioners, and I could not say without looking through the records of the

grants and leases, when that clause first made its appearance in the conveyance, but it has been in there for a great number of years.

Q. As far back as you remember? A. I would not like to say that.

Q. How old is the Board? A. The act was passed in 1869, and I think the Commission was appointed in 1869. I think it was in 1865 when the first Board was considered.

Q. I think that would be of some interest to learn, because if the covenants are not in all the deeds, grants made immediately in front of the streets in municipalities—it may devolve upon the Attorney-General to settle the rights of the municipalities.

MR. DUFFIELD.—I think the suggestion is very important, and we will try and look into that matter.

BY MR. DUFFIELD.

Q. You can ascertain from examination of your records when this clause was first incorporated into your deed? A. Yes, sir.

Q. Will you do that for us? A. Yes, sir,

BY SENATOR MINTURN.

Q. Before I leave that subject, under what authority do you make a grant of land under water between low water mark and the exterior line of solid filling, as you call it? A. I understand the Commission acts under the Riparian law, and my understanding of the theory of their action is, that the State is the absolute owner from mean high water line out to the center of the stream, in case of streams that are the dividing line between states, and, of course, streams where they are in the state and on the ocean front.

Q. Is it your idea that it devolves upon the Riparian Board to say whether in any particular case a grant shall be made of land under water between high water mark and the center line of the stream? A. The Riparian Commission act provides that the Commission shall have due regard to the interest of navigation, and if they did such a thing it would be in contravention of navigation. I think that would be in contravention of the rights of navigation, and the Gevernment would not permit such a thing, and the Commission never have; and indeed, the law says that the Riparian Commission shall first fix the exterior line before they can make any grant. They must fix the exterior line, and that must be fixed in accordance with the interest of navigation.

Q. Prior to the enactment of the Riparian Act in 1869, I think you said the first one, there was no doubt about the right of the owner of lands fronting upon navigable streams to wharf out to the exterior line? A. There was no exterior line then.

Q. Such line as the state might create? A. You remember the Wharf Act of 1851?

Q. That is the one I am referring to, although I think there was one prior to that. A. The Riparian Act commenced in 1869. In 1865 there was an investigating committee, and in 1869 there was an act creating the Board. But in 1851 the Freeholders of counties were empowered—and some of the decisions refer to the act of 1851 as the time since which no reclamation made by riparian owners is operative against the State, but before that time, because the state had given no notice of its ownership, that filling in or reclaiming before that time the person acquired little. But the act of 1851 gave the Freeholders a right to say how far out an applicant shall go.

Q. That was only for the purpose of docking? A. Yes, sir.

Q. There was never any act until the Riparian Act of 1869 which gave the owner of the shore front a right to fill in between high and low water mark? A. I don't recall; of course, the wharf act of 1851 gave him the right to wharf out to such line as the Freeholders fixed.

Q. There is no doubt about that, but there was never any enactment which gave him the right to fill in and use and build on that land? A. No, I don't know of any; but I do know that the courts interpreted or sanctioned any filling that might have been done between high and low water line before the act of 1869.

Q. No doubt about that, the owner of the land had a right to do that, unless the state prevented it, and then came the Freeholder act of 1851, which gave them the right to grant permission; then came the Wharf act of 1851, and then the Riparian act of 1869, but the Riparian act was the only act that authorized any such thing as filling in between high and low water mark, and I want to know in view of that legislation where the authority is that gives this board the right to give any riparian owner the right to fill in to the exterior line created by the United States or any state? A. I am very clear that it is the theory of the Commission that the state, being the owner of all land under water, from high water line clear across into the state streams, that the legislature in appointing the Riparian Commission, defined what their duties were, and it said they were to fix the exterior line, and to wharf and fill out to that solid filling line and pier out to the exterior line.

Q. I don't understand that the decisions of this state, or any other state, on the theory of filling in, go any further than to allow the owner of the ripa to fill in between high and low water mark; they allow the right of dockage or wharfage, but not the right of

filling in, and, therefore, the state did not concede in my judgment, in 1869, more than a mere right to convey or lease the land that the state itself could fill in to fill in on, or build—namely, between low and high water. Otherwise, they might take in all the water to the middle of the stream? A. Not under the Riparian Act, because that would be destructive of commerce. I think it is the theory of the Riparian Commission, and the Act of 1869 would disclose it, that whereas the legislature from 1851 when the freeholders of the counties fixed—

Q. Only for wharfage? A. Yes, sir. Then the act of 1869 gave the Riparian Commissioners the authority, and put upon them the duties of ascertaining where the exterior line should be placed—

Q. For wharfage, that is? A. And to dispose of the state's land. That is the theory as I have always understood it.

Q. That is a question that I have brought out so that the Attorney-General may investigate it for us, because I deny the right of the board to make a grant of land further out than low water mark except for wharf.

BY MR. DUFFIELD.

Q. Now, turning to the question as to the amount of lands which have been leased by the state, have you any figures which will show us what lands, in extent, have been leased, and how much riparian land is now still owned by the state? A. Under the direction of the board, I have prepared from the records of the office a summary of the proceedings showing the extent of the lands sold by the Riparian Commission, and also under their direction have prepared a statement of the mileage of water front remaining unsold, and a tentative estimate of its value.

BY SENATOR MINTURN.

Q. Have you a map in your office that shows the general condition of the riparian land in this state, whether sold or leased, or unsold? A. Yes, sir, the maps of the office—

Q. One general map? A. No, sir; that would require either a map so small in scale that it would not be intelligible, or so large that it would not be accommodating. On the county maps is recorded every grant that is made; so you will see in each drawer the maps of that county, and the grants that have been made.

Q. So that by calling for any particular county map you can see the lands that have been disposed of, and those that are undisposed of? A. Yes, sir; at a glance. The proceeds from grants and leases of Riparian lands up to the end of 1905, amount in round numbers to six million and a quarter. The Board estimates that about 1,000 miles of water front of the state, still unsold, at prices

that they consider conservative, would amount to about fifteen millions of dollars. As has been stated by the chairman of the Board, in that fifteen million is included both what he has termed the active assets of the state and those that are not likely to come into use for—it is hard to say how many—years. The character of such lands is Barnegat Bay and the inland waters of the southern counties, and the ocean front; of what the chairman of the board has called active lands, there is an estimated value of three millions and a quarter unsold, and that is at the prices that the Commission are now making sales at and considering. Those lands, actively valuable, are in the Hudson river and New York Bay, Kill von Kull, Newark Bay, the Hackensack and Passaic rivers, Staten Island Sound, the Raritan river and the Delaware river.

Q. Is there much left on the Hackensack river in Hudson county? A. Yes, sir; there is a very large frontage on the Hackensack, in Hudson county, still left unsold.

BY ASSEMBLYMAN BARBER.

Q. Do the lands in the Delaware river have any important value? A. Yes, sir, a very important value; perhaps largely prospective; but I mention some of the lower parts, in Gloucester and below, where the water front must be taken by industries and plants that would not be permitted near the center of population; that must be valuable for that purpose.

BY SENATOR MINTURN.

Q. Is there any land in Hudson county on the Hudson river left unsold? A. Yes, sir.

Q. Where is that? A. Commencing at the county line between Hudson and Bergen there is one tract of about 700 feet. Then I think there is nothing else until you get down to the King water front, where there are two pieces of about 250 feet each, and perhaps there is a smaller piece, I think there is one smaller piece, making about 2,000 feet in Hudson county of water front that still belongs to the State.

Q. Have the owners of the upland applied for the purchase of those tracts? A. Yes, sir; there are applications pending before the Board for the entire unsold portions on the Hudson river in Hudson County, and the Commission have fixed—in the case of two applications—have fixed the price, but the applicants have stated that they have found it impossible to dispose of the land at the figures fixed, and have not accepted the rates, and the grants have not been made.

BY ASSEMBLYMAN REED.

Q. Is there any investigation made on the part of the Riparian

Commission as to the abutting property owners on rivers, where they have taken possession of property and filled in, and have not made any application to your Board for such property? A. Yes, sir; there is not only a very thorough and general survey of the entire water front, but the Commissioners in a general way keep an oversight on the water front; they are familiar with it and it is naturally in their mind, and they are interested; and there are other sources of information which, perhaps it might not be fair to disclose, which the Commissioners have at their disposal, and it is a very rare thing that any improvement is attempted on lands without securing the rights of the state, because in the first place, the applicant has to go through a Title Guarantee Company for a search of title, and they are apt to be caught, and are very careful if the state rights have not been acquired; and again, if anybody is going to put a considerable amount of money in improvements, they are careful, if they put it on land under water, to have the title to the land. So there is careful supervision kept of this thing, and it discloses every now and then very important results. As the Commission a short time ago in their examination ascertained, three cases of that kind had taken place, but under rather peculiar circumstances. They were not trespassers, they thought they had title; they had no freeholders' license, but the Commission has a record of all such and has supervision of it, and the result was that some $25,000 was paid into the state as the result of the Commissioners' actions in those three cases.

Q. I had in mind some cases that I was not clear about; I didn't know that they had acquired the title through the Riparian Commissioners. A. I think it is quite likely that in the case of some temporary summer dock, or some light structure, or something of that kind, that would be taken up in the winter time, I think it is quite likely that throughout the State there are trespassers of that kind, but it would not pay to have supervision over them; the expense of having them supervised would not be at all profitable, and it would seem like a hardship. I think that is the attitude of the Commission on that question.

BY MR. DUFFIELD.

Q. Have you prepared a statement by counties as to the amount of riparian lands unsold and unleased? A. Yes, sir; under the direction of the Commission I prepared a statement by counties of the frontage, riparian frontage, sold and unsold.

BY SENATOR MINTURN.

Q. Does that show the particular streams where the land is

located? A. No, sir, it does not; it is a statement of the entire frontage in each county.

Q. Could a list be made by giving the land unsold under water in the different counties, mentioning also the particular scheme or navigable water? A. It could be.

Q. I think it would be more desirable than the mere statement of the unsold land in the county. A. Take Bergen county, I might read one or two. The Hudson river is by itself. Then rivers and creeks in Bergen county, the Hackensack river and the different creeks. In Hudson county, the Hudson river, New York Bay and Kill von Kull are put together.

Q. How many acres of frontage? A. One and a third miles unsold in the Hudson river, New York Bay and Kill von Kull.

BY MR. DUFFIELD.

Q. How many sold? A. In Hudson county fourteen miles. Then in New York Bay, and the creeks, etc., I have them together. And in Essex county, Newark Bay and the Passaic river are put together. In Union, Arthur Kill and Newark Bay are put together, and then the Elizabeth river, etc., which is about the same character of water front.

BY SENATOR MINTURN.

Q. You mentioned the streams, then? A. Yes, sir; where there is a difference of value in the water front it is stated in this classification.

MR. DUFFIELD.—I understand it would be an extremely difficult and arduous task to get it more differentiated than he has it now.

A. I prepared a statement of what has been called the active assets, amounting to $3,386,000, and that I have classified in this way. This is a copy of a letter written to Mr. John L. Swayze, the Assistant Attorney-General, on December 21, 1904. The conditions have not changed materially since that time. At the request of the Attorney-General I sent him this letter:

"December 21, 1904.

JOHN L. SWAYZE, ESQ.,
Assistant Attorney-General,
Trenton, N. J.

Dear Sir:

In making up the estimate of the value of certain riparian lands of the state, referred to in my letter to you of September 17, 1904, a copy of which I mailed you yesterday, I used the following figures:

LANDS UNDER WATER ON THE HUDSON RIVER, OPPOSITE THE CITY OF NEW YORK.

About 1.8 miles, estimated value..... $1,019,500

These lands are available for enterprises of the highest commercial importance; they have railroad facilities and they are opposite the very valuable water front of the city of New York.

The railroad companies have their termini along this front; sugar refineries and like industries are established and in operation.

LANDS UNDER WATER IN NEW YORK BAY.

About one-half a mile of front, estimated value..... $250,000

These lands are available only after certain work, such as dredging channels, to bring them into communication with the deeper waters of New York Bay. The Pennsylvania Railroad Company the Standard Oil Company and the National Storage Company have utilized them, and there is no question but that they are very valuable assets of the State.

KILL VON KULL.

(Connecting New York and Newark Bays.)

About one-half mile—estimated value..... $125,000

These lands are available for all kinds of manufacturing purposes and are utilized in part by such enterprises as the Babcock and Wilcox Co., the Guffey Petroleum Co., the Standard Oil Co., copper refineries and kindred industries.

NEWARK BAY, HACKENSACK & PASSAIC RIVERS.

About 19.3 miles—estimated value..... $929,000

All of this water front is available for manufacturing purposes of all kinds where deep draught vessels are not used, and are very valuable for this purposes; and with the deepening of Newark Bay and the rivers, will become still more valuable.

STATEN ISLAND SOUND. (Connecting Newark and Raritan Bays.)

About 6 miles—estimated value..... $800,000

This water front is very valuable and available for manufacturing purposes, for refineries and kindred industries, not permissible, perhaps, very near to closely built up sections. It is one of the most valuable sections of water front in the state.

RARITAN RIVER. (North and south sides.)

About 2½ miles—estimated value..... .... $90,000

Available for smelting works, brick manufactories, and kindred industries not requiring vessels of great draught.

DELAWARE RIVER (At Camden.)

About three miles—estimated value..... ..... $172,500

This front is available for railroad termini, manufactories, refineries and kindred industries needing railroad as well as water communication.

The total is $3,386,000.

In addition to the above water front, there is, of course, miles of water front upon the smaller rivers, bays, creeks, and the extensive water front of the Delaware river, outside of the water front of Camden, which is valuable, but which I have not reported in this estimate as an active asset, and the demand is so limited at present, that it would be difficult to fix a value for it.

Yours very truly,
JOHN C. PAYNE.
Sect'y & Eng'r."

BY SENATOR WAKELEE.

Q. You gave the total receipts of riparian lands up to the date of January 1st, about six million; where and how can the Committee find out how much of that six million has got into the permanent fund of the State and how much has been paid for expenses and disbursements? A. I don't think they have found that out—that was the total receipts—what disposition has been made of it.

Q. Where can the Committee get the information? A. I don't know; the Riparian Commissioners have no control of the disposition of the funds. I suppose the comptroller—if I remember right—the reports of the comptroller's office.

SENATOR WAKELEE.—Will you see, Mr. Attorney-General, where that can be found out? How much of these six millions which the State has received from that time up to date is now on hand as school fund or otherwise, and how much has been expended?

MR. DUFFIELD.—I should say certainly the entire fund ought to be. Any money which once goes into the school fund must stay there.

A. There was a time when it was diverted; it was used for State purposes.

MR. DUFFIELD.—I will ask the comptroller to make up a statement. I have nothing more today, and we had better adjourn to a day fixed and have another meeting here.

The statement produced by the witness Payne, and referred to by him, of the Riparian lands of the State sold and unsold, is as follows :

BERGEN COUNTY.

Hudson river—County line to Coytesville, 9,235 unsold,
Unsold 7¾ miles, County line to State line.
Sold 5½ miles, " " " " "
Rivers and Creeks—22 miles—very little sold.

HUDSON COUNTY.

Hudson River	1,450. Unsold 1⅓ miles.	
New York Bay	2,800.	
Kill von Kull	2,650.	
Newark Bay Hackensack River Creeks, &c.	Unsold abt. 25 miles. Sold 14 miles.	

ESSEX COUNTY.

Newark Bay)	Unsold	17.5 miles,
Passaic River)	Sold	3 miles.

UNION COUNTY.

Newark Bay)	Unsold	3 miles.
Arthur Kill	Sold	4¼ miles.
Elizabeth River Rahway River Norses Creek	20 miles unsold.	

MIDDLESEX COUNTY.

Arthur Kill	Unsold	5½ miles.
	Sold	2¾ miles.
Bays, Rivers) & Creeks)	Unsold	75 miles.

MONMOUTH COUNTY.

Ocean, Bays, Rivers and Creeks.	Unsold	about 60 miles.
	Sold	26 miles.

OCEAN COUNTY.

Bays, Rivers)	Unsold	about 145 miles.
Ocean & Creek)	Sold	11 miles.

BURLINGTON COUNTY.

Ocean, Rivers)	Unsold	about 130 miles.
& Creek)	Sold	8 miles.

ATLANTIC COUNTY.

Ocean, Bays)	Unsold	145 miles.
& Rivers)	Sold	14 miles.

CAPE MAY COUNTY.

Ocean, Bays)	Unsold	115 miles.
& Rivers)	Sold	18 miles.

CUMBERLAND COUNTY.

Bay, River)	Unsold	115 miles.
& Creeks)	Sold	3¼ miles.

SALEM COUNTY.

Bay, River)	Unsold	85 miles.
& Creeks)	Sold	⅓ mile.

GLOUCESTER COUNTY.

Rivers &)	Unsold	40 miles.
Creek)	Sold	3 miles.

CAMDEN COUNTY.

Rivers &)	Rivers—about 4 miles unsold.	
Creeks.)	Sold	5½ miles.

MERCER COUNTY.

River and)	8 miles unsold.
Creek.)	½ mile sold.

Adjourned until August 7th, 1906, at the State House in Trenton, N. J., at 10 a.m.

Trenton, N. J., August 7th, 1906.

Meeting of Special Committee of the New Jersey Legislature to investigate the granting of Riparian Lands by the State, &c.

PRESENT :

SENATORS WAKELEE (Chairman), MINTURN and AVIS, and ASSEMBLYMEN BARBER, HOLCOMBE and JONES.

ATTORNEY-GENERAL MCCARTER and ASSISTANT ATTORNEY-GENERAL DUFFIELD.

JOHN C. PAYNE, recalled. Examined by Mr. McCarter.

Q. Will you produce the maps and other documents that you have with you? A. (Mr. Payne did so.)

Q. Pursuing the subject of Riparian lands that still remain as assets of the state, will you take up Hudson County, or rather the Hudson river lands, first? Have you a map with you showing the Riparian lands that remain in the state upon the Hudson river, that have not yet been either leased or sold? A. Yes, sir; I have the Commissioners office map showing the lands both sold and unsold on the Hudson river, the sold being colored red and the unsold left the color of the paper.

Q. You produce that map? A. Yes, sir.

Q. What is the total length of the Riparian land on the Hudson river, without regard to what has been sold and unsold? A. The total front on the Hudson river in Hudson county?

Q. No, sir; on the Hudson river. A. There is about thirteen miles taking it up to the State line.

Q. Have you any estimate of how much is undisposed of in Hudson county?

SENATOR MINTURN.—Does that take in the Kills?

A. No; only the Hudson river.

SENATOR MINTURN.—Does it take in New York bay?

A. No, sir; only the Hudson river.

Q. I think at the last hearing you produced a letter you had written to the former Assistant Attorney-General in which you classified the riparian lands into Hudson river, New York bay, Kill von

Kull, Newark bay, Hackensack river, Passaic river, Staten Island sound, Raritan river, and the Delaware river at Camden? A. Yes, sir; I produced such a letter and it was entered into the record at that hearing.

Q. Pursuing that subject, and confining ourselves at present to the Hudson River, I will ask you if you know how much riparian lands remain undisposed of either by lease or grant in Hudson County? A. On the Hudson River 1,450 feet in Hudson County, and in Bergen County, to the Coytesville line, there is 9,234 feet. I use the Coytesville line because that is the southern termination of the Palisade Park, and the Commission is restricted in the making of grants of land under water, or obliged by law to put in the restriction that they shall not be used for any purpose in connection with work destructive of the Palisades; so I have not included those in the estimate.

BY SENATOR WAKELEE.

Q. Then that 9,000 feet only extends north to the Coytesville line? A. Yes.

BY SENATOR MINTURN.

Q. What property in Hudson County is included in that 1,400 feet, I mean what property does it front? A. One tract is a tract at Bull's Ferry; the county line between Bergen and Hudson Counties, eaches the Hudson River at Bull's Ferry, and a part of what is known as the Bull's Ferry tract is included in that 1,400 feet, as part of it. Another part is at Weehawken; two tracts of about 350 feet.

Q. Is that the King estate? A. Yes, sir.

BY MR. McCARTER.

Q. Anything else? A. That is all on the Hudson river in Hudson county.

Q. So there are practically three tracks in Hudson county on the Hudson river undisposed of? A. That is all.

Q. Are applications pending for any of them? A. Yes, for all three tracts.

Q. So if those applications are granted the state would have no longer any riparian lands in Hudson county? A. On the Hudson river.

Q. On the Hudson river? A. Yes, that is right.

Q. Start now at the lowest point in Hudson county, and go north and give to us the dates of the grants and the amounts received by the state for the grants or leases? A. In 1905 I prepared, at the request of Governor Stokes, a statement of certain grants and leases made on the Hudson river, but it is not a complete list. I made it under the direction of the Commission, for the purpose of

showing the prices that had been charged, and so, as I stated in the letter to the Governor, I have shown such grants as have been made in the past ten years which indicate a change in price. I mean by that where they are two or three grants contiguous, all at the same rate and at the same price, I have shown only one.

Q. You may pursue the same plan in answering my question. A. So, beginning in the order of location, the first conveyance that I took up at that time was a license to the New Jersey Shore Line Railroad Company at Bull's Ferry.

Q. License to do what? A. To construct and maintain a railroad; part of, I think, the Erie railroad system.

Q. Upon land under water? A. Upon land under water. The license by the Riparian Commission was to allow the railroad company to occupy such part of the right of way as lay outside of the high water mark, and within the line of the right of way. That was about one-seventh of a mile, or 1.3 acres, and the consideration was $400.00.

Q. About $300 per acre. In your experience, has any previous grant or license of that character ever been given anywhere? A. Yes.

Q. Where? A. There was a license given to the Navesink Railway Company.

Q. Down near the Atlantic Highlands? A. At the Atlantic Highlands in 1892, very similar to this.

Q. With the exception of that, have you ever known of any similar license to be given to a railroad, to simply construct a railroad over the lands of the state?

SENATOR MINTURN.—Was not that question up recently, Attorney-General?

MR. McCARTER.—Yes, in the Schaumberg case. A. Yes, a license was given just about a year previous to that under the same conditions and for the same purpose on the Hudson river, and I think, perhaps, for the same interests, the same railroad interest—perhaps not—but it was called the Edgewater and Fort Lee Railroad, and was a branch of the Susquehanna and Western.

Q. Where was that? A. The license commenced at Edgewater, and ended practically at Fort Lee.

Q. How much was received for that by the State? A. That license was for a mile and a half and comprised an area of 3.04 acres, and the consideration was $1,500, making it about $500 per acre. I am reading now from a statement I sent to Governor Stokes in 1905.

Q. Is it not true that in each one of these cases the Board under-

took to make a license of that kind not under the Riparian Act but under the general railroad law? A. That is the truth, that is the situation.

Q. The Board didn't conceive, and you don't conceive that the Riparian Act gave them any right to grant any such license? A. No; I think the Board have no such idea.

BY SENATOR WAKELEE.

Q. You call that a license, what is the nature of a license? A. A license to construct and maintain a railroad.

Q. In perpetuity? A. I think the understanding is that it is a license as long as it is used for the purpose for which it is issued.

Q. Railroad purposes? A. Yes, sir.

Q. What is the distance north and south covered by the first lease that you suggested?

SENATOR MINTURN.—You call this a license as distinct from a lease?

A. Yes, sir.

Q. The last one was what? A. A seventh of a mile in length.

BY THE ATTORNEY-GENERAL.

Q. Those licenses undertake to give to the railroad company, so far as the state can, a perpetual right, or a right at least so long as the company operates as a railroad, to construct and maintain a railroad track or tracks upon the property of the state, is that right? A. I so understand it.

Q. Of course, that didn't include the upland? A. No, sir.

Q. Or the rights of the owner in the upland? A. The situation as to the interest of the owner, in the case of the New Jersey Shore Line Railroad Company—

Q. Is that the first one you mentioned? A. Yes, sir.

BY SENATOR MINTURN.

Q. What was the date of that? A. March 31, 1904. Neither in that case nor in the license to the Edgewater and Fort Lee Railroad Company were the shore owners notified at all; so that is in answer to your question in relation to the rights of the shore owner.

BY THE ATTORNEY-GENERAL.

Q. How wide a strip did this license include? A. From a foot or two to perhaps thirty or forty feet. In the Edgewater and Fort Lee the entire width of the right of way, I think, was about forty or fifty feet.

Q. Can you compare the amount of the award, by the Commissioners, to the owner of the upland, for his rights, with the amount received by the Commission for the state right in any one of these cases? A. I have only the statements of the attorneys interested

in the condemnation proceedings in the New Jersey Shore Line Railroad Company, and my recollection is that the Commissioners awarded about $30,000 per acre for the upland taken, and that included the damage to the remaining upland.

BY SENATOR WAKELEE.

Q. The portion of the upland taken was on the same right of way, a portion of the right of way being on the upland and a portion on the State's land? A. Yes, sir; it was an irregular piece cut by the right of way line.

Q. And the portion of the State's land taken would be the western portion adjoining the upland? A. The eastern portion, Senator; it would be the easterly part from high water line out.

Q. The portion of the land which was taken by this railroad was the western part of that land which would be adjoining the high water line? A. The part owned by the shore owner is the western part of the right of way, but the part owned by the State is the easterly part.

Q. But the part of the State land was the westerly part of the riparian land? A. The western edge of the land under water.

Q. So you cut off the owner of the upland? A. Yes, sir.

BY SENATOR AVIS.

Q. Was the upland condemned before the Riparian Commissioners granted the State land to this railroad? A. No, sir; after.

BY THE ATTORNEY-GENERAL.

Q. The attorney who gave you this information, was who? A. Mr. Frank Earl.

BY SENATOR AVIS.

Q. Was the railroad company the owner of the upland at the time the Commissioners granted the riparian right to the railroad company? A. No, sir.

Q. Was notice given to the owner of the upland? A. No, sir; the license was set aside by the court for that very reason.

BY THE ATTORNEY-GENERAL.

Q. If I understand you, then, assuming that those licenses you have been referring to were effectual, and the railroads had been constructed, there would have been between the upland and the other riparian land still owned by the state, a railroad in actual existence? A. Yes, sir.

Q. Separating, so to speak, the upland and the land under water? A. Yes, sir.

Q. Now, how much acreage of state land was taken, did you say, in this case where you made the comparison? A. One and a third acres.

Q. And the consideration was what? A. $400, making $300 per acre.

Q. How much was condemned, as you understand, from the private owners? A. My recollection is, it was about 7-10 of an acre.

Q. And that award was $30,000? A. Yes, that is my recollection.

Q. $30,000 for 7-10 of an acre? A. That is my recollection, including the damage. I am subject to correction by the record in that case.

Q. When were these three licenses to the railroad made? A. The earliest in point of time that I have mentioned, that of the Navesink Railroad Company, was made in 1892. The second was made May 28, 1903, the Edgewater and Fort Lee Railroad Company, and the third, that which you have been discussing, was made March 31, 1904.

Q. Was any consideration given, if you know, by the Commission to the question of the detriment to the remaining State land, in making these licenses to the two railroads upon the Hudson river? A. Yes. I remember that in the matter of the Edgewater and Port Lee Railroad Company, which was the earlier of the two Hudson river licenses, the Commissioners considered very carefully and at length the effect on the balance of the State's lands, and the testimony of persons appearing, who were interested in Hudson River lands, and the judgment of the Commissioners and the history of those lands, all agree that it would be a beneficial thing for the state's land to have a railroad running along that shore. I say the history of the locality; it has been within my knowledge that when the question of price for that water front has come up, the past 20 years perhaps, I have heard the applicant and the people interested say, "If we had a railroad up through there, it would make our land worth something, but we are isolated, we cannot get anywhere, and the lands are worthless." That was the argument brought before the Commission in those days to induce them to fix a low rate, and when this Edgewater and Fort Lee Railroad application came in, it was urged upon the Commission that it would give this land railroad communication as well as water communication on the eastern front.

Q. Won't you explain to this Committee how the State's land will be benefited by this situation, which is, as I understand it, as follows: a piece of the upland is taken and a piece of the State's land immediately adjoining, upon which a railroad is built and thereafter occupied; that leaves the upland to the west of the railroad, and it leaves the State's land under water east of the railroad; how is it

the judgment of the Commission, as you understand it, that the maintenance of that railroad there bisecting the upland from the land under water, is a benefit to the land under water? A. The fact of its bisecting the land I feel sure the Commission didn't regard as a benefit to the land; that was an unavoidable and incidental damage to the land, but notwithstanding that, they felt that a railroad there was an advantage.

BY SENATOR MINTURN.

Q. An advantage to whom? A. To the State, an advantage to the State's land under water.

BY SENATOR AVIS.

Q. At that time how much land had the State under water in that locality, except what was outside of those two grants, how much frontage? A. Practically as much as it has now.

Q. How much has it now in that locality? A. I should think about 5,000 feet. It is a little difficult to say. I should have to make some measurements, which would take a little time, in order to say how much front was affected by these two licenses.

Q. Not exceeding 5,000 feet? A. Not exceeding that.

Q. And those two licenses have how many feet river front? A. One has one-seventh of a mile.

Q. That is about 750 feet? A. And another a mile and a half. In that mile and a half there were a good many sections that were already granted, that the land didn't belong to the state.

BY SENATOR MINTURN.

Q. Did the Commission consult counsel on that question before the grants were made? A. Yes, I remember the Navesink license had the benefit of considerable counsel. The license to the Edgewater and Fort Lee Railroad Company was the second one. I remember, Mr. Cloke—I have forgotten whether he was chairman of the Board or not—asked the question whether the shore owner ought not to be notified, and I suggested that the counsel of the Board be asked that question as the legal adviser of the Board, and he was, and his advice was that it was not necessary.

Q. Who was the counsel? A. Mr. Record. That it was not necessary, that the law under which the Commission were making the license was mandatory on the Commission to make it without regard to the shore owners.

BY MR. BARBER.

Q. As I understand it, the opinion of the Commission was that the state land would increase in value, the running of the railroad on the land under water, through the construction of the road—that is, to the east of the road, but the land to the west of the road

under private ownership was damaged to the extent of $30,000 an acre? A. That was not the action of the Riparian Commission; that was the award of damages, the award of value in damages by a commission appointed for that purpose.

Q. What peculiar conditions affected that property so that the award of damages was so great? A. As always happens in those cases, where there are Commissioners appointed, the land owners made up their case as fully as possible, and show the use that they desire to put their upland to, and in connection with the land under water, and I can readily see that they made up a case that convinced the Commissioners that for the uses to which they wanted to put the land it was damaged to that extent; but the Riparian Commissioners, of course, when they made these licenses, simply had in view—there was upland and land under water, and without any knowledge of what particular use the upland might be put to as a general proposition, I believe, it was their judgment that a railroad through there would enhance the value of the state's land.

BY THE ATTORNEY-GENERAL.

Q. You have answered, but I fail to catch your reply in regard to the legal advice the Board had in the case of the Navesink railroad; will you kindly repeat that? A. I think I said, I believed they had a good deal of legal advice, and by that I mean that I was not so intimately familiar with all the operations attending the granting of that license to be able to speak from the record. I know a great deal of the history of that license and I know what the papers show. I know what the minutes of the Riparian Commission show, for instance. The minutes of the Riparian Commission show that the Attorney-General was requested to be present, but they do not show that he ever was present.

Q. Do you know who was the Attorney-General at that time? A. Attorney-General Stockton, and the minutes show that there was a notice to the shore owners, who objected to the location of this railroad, to be present at a meeting of the Riparian Commission, which was to be held at nine o'clock in the morning, and that is all that the record shows as to that.

Q. Now, this Navesink railroad is located where? A. At Atlantic Highlands.

Q. It was a railroad that was constructed to connect with the Long Branch boat, after they had to leave Sandy Hook? A. They formerly landed at Spermacetti Cove, Sandy Hook, and the government ejected them from that landing place, and the boats go down to the Atlantic Highlands, and from there the railroad curved

around off to the shore, and along the shore and across the Shrewsbury river at the Highlands, and to the original road on the beach.

Q. Before that railroad line was constructed, the people who lived at Atlantic Highlands had no opportunity to get to Jersey City at nine o'clock in the morning to protest? A. Yes—

Q. Do the minutes show that they got there?

SENATOR MINTURN.—What is that point?

ATTORNEY-GENERAL.—They had no railroad facilities, and it was rather a difficult job to get there.

Q. How could they get there, go over to Matawan to get there? A. I think that was, perhaps, the nearest road.

Q. That is, perhaps, an eight or ten mile drive? A. Yes, sir. There is also in the papers in that case what purports to be the consent of certain shore owners; it is a mere statement, "I hereby certify that those people have consented."

Q. What was the length of that grant or license? A. Speaking from recollection, I think that must have been—it is the distance from the Atlantic Highlands to the beach, two or three miles.

Q. And do you remember what the state got for that? A. I don't remember.

Q. Can you ascertain? A. Yes.

Q. And will you do so? A. Yes, sir.

Q. Before the Committee rises? A. Yes.

Q. Now, returning to Hudson county—we have diverged a little —give us the next grant you have in your letter to the governor.

BY SENATOR WAKELEE.

Q. I want to ask a question about these two licenses up in Bergen county and the one that the Schaumberg case covers; does not the river road, a public road, run along the river all that full distance? A. Along the part covered by the Edgewater and Fort Lee license, that is true. My impression is that they have diverted the road, but there was a road at that time running practically along the shore.

Q. Taking it up in Bergen county, where the river road does run along the river edge, is not this railroad being built immediately east and adjoining this river road and public street? A. Yes, sir.

Q. So that any remaining state land under water would be cut off from the real upland not only by the railroad, but by this public road which also existed at that point? A. That is true.

Q. Do you know of any place along there where the public has any right to get to the river at all, any public street going down to the river? A. There has been no grant, Senator, of land under water to any municipality along that front. I believe the borough

of Edgewater has the riparian right, is the riparian owner, but they have not acquired the land under water in front of their riparian ownership.

Q. Their application is pending for that? A. Yes, sir.

BY THE ATTORNEY-GENERAL.

Q. The Edgewater grant was never attacked in court or set aside? A. No, sir; never attacked.

Q. Was it fulfilled by the railroad within the time limited? A. No, sir; the license was extended once for two years, and at that time expired without the full completion of the road. And then application was made for a second extension and the Commission took up the matter, and on examination a report on the condition of the work was made, and the question of granting that second extension is now pending before the Board.

Q. The necessity for extension being occasioned by the fact that the license was made conditioned upon the road being completed within two years, or whatever the period was? A. Yes, sir.

Q. And they failed to complete it? A. Yes, sir.

Q. The Edgewater Company has already had one extension and is now before the Board as an applicant for a second? A. Yes. sir; the extension has expired.

BY SENATOR WAKELEE.

Q. Is it not a fact that certain condemnation proceedings have been brought by the Edgewater Railroad Company recently? A. I understand so.

Q. Do you know what the amount of damages allowed has been? A. I do not; I haven't heard. I haven't heard of the termination of the proceedings.

SENATOR WAKELEE.—Can you find out, Attorney-General?

THE ATTORNEY-GENERAL.—We will look it up.

SENATOR WAKELEE.—My recollection is it runs way up into the thousands of dollars, forty or fifty thousand dollars.

BY THE ATTORNEY-GENERAL.

Q. Do you know how much of the Edgewater grant has been actually built upon; in other words, how much of the length included in the license and first extension has been actually constructed? A. Under the direction of the Board I made an examination of the work already constructed, and as to the length covered by the license, a very small part has been put under construction. It happens that they have constructed as far as they can before reaching the owner who has the riparian right, and the construction was stopped by condemnation proceedings. Then they have skipped that part and gone along to another such point; and then

again along a little further until they were stopped by physical difficulties, in crossing the terminus of the Ferry Company. The question was whether they should go overhead or underneath, and as a matter of fact, in length there is but a small portion of the license covered by constructive work.

Q. Then the Board has not been able to see or feel any of this alleged benefit that it is hoped to come from the completion of the railroad up there? A. I would not like to say that. The Board have very recently, indeed, at its last meeting, received an application for the riparian right as far north as Pleasant Valley, and fixed a price of $85.00 a foot front, and the applicant accepted the lease at that rate—accepted the price and will take a lease at that rate.

Q. Where is this Pleasant Valley application in reference to the Edgewater license? A. About in the middle of the tract covered by license, in the middle of the length of the tract, and the prices heretofore obtained in that locality, the highest price just south was $40.00 a foot, and I can't say how much of that additional $45.00 is the result of the anticipated construction of the railroad or the increase in value of the water front.

BY SENATOR AVIS.

Q. Are they obtaining these riparian rights immediately outside of the grant to the Railroad Company? A. Yes, sir; which will be subject—I would like to recall that—I don't know what the action of the Commission will be with reference to that application. The situation will be, there is a license which may be terminated by the Commission.

BY THE ATTORNEY-GENERAL.

Q. The license to the railroad? A. Yes, and I think perhaps this grant may be in front of part of that license; whether the Commission will consider that or not I don't know.

BY SENATOR AVIS.

Q. Suppose the Commission should not revoke the license, do you mean the applicants have agreed to take the riparian rights outside of the license granted to the railroad? A. I can't say what is the condition as to that; I can't say whether the applicant has considered that question, or whether he is cognizant of the fact that there is such a license in existence.

Q. That matter was not taken up before the Board when it was discussed? A. No, when the price was fixed at the last meeting it was not discussed.

BY SENATOR MINTURN.

Q. Where did you get the power in the riparian legislation to license? A. Through the general railroad law,

THE ATTORNEY GENERAL.—I will state that these three licenses, so far as I know, all recite that they are made pursuant to Section 13 of the present revision and Section 36 of the old revision of the railroad law, which Judge Fort in the Schaumburg case recently held had no application to a situation of that kind.

BY SENATOR AVIS.

Q. Was the question of the license to the railroad company taken into consideration by the Commission in fixing the price for this new application at $85.00 per foot over a part of this land in front of the railroad license? A. My recollection is that it was not referred to in the discussion of the application.

Q. Then the price was fixed practically upon the proposition that there was no license to the railroad company, or at least in the same manner as you would fix a price in a locality where there had been no license to a railroad company? A. I think that is true.

BY THE ATTORNEY-GENERAL.

Q. Now, to go back to the other leases referred to in your letter to Governor Stokes; take up the next one and give the price for that and the location of it. A. The next conveyance that was referred to in that communication in point of locality—these cases cited to the Governor were cited in the order of the location of the tracts conveyed and not of the dates.

Q. Describe them, giving the date as well. A. So that the next conveyance I refer to was made April 26, 1904, and was part of the tract that this New Jersey Shore Line Railroad was made the subject of, of the license. It was about forty feet front, and the lease was made for $2,732.00 or $68.30 a foot.

Q. Can't you localize that with reference to some physical point that we know? A. This conveyance that I am speaking of is at the old Bull Ferry, which is the point where the county line between Hudson and Bergen reaches the Hudson river.

Q. That was in 1894, and averaged how much? A. $68.30 per foot.

Q. How much frontage? A. Forty feet.

Q. Now, go on to the next one. A. The next conveyance that I have cited is that to the United Oil Company on September 30, 1895. It is about 1,000 feet north of the grant to the Bull Ferry Land Company. The consideration was $7,350.00, or $69.34 per foot.

Q. That was how much higher than the other? A. One dollar a foot higher; that slight difference comes about by the Commission at that time charging acreage, what we call acreage; that is the area of the land between high water line and the solid filling line, and results in a slight difference in the price per foot paid.

Q. But this was 1,000 feet north of the other? A. Yes, sir.

Q. Everything else being equal, do you consider and does the Commission consider land 1,000 feet north of the Bull Ferry land more valuable than the Bull Ferry land? A. I think there should be very little difference in the value as to the locality in 1,000 feet on the Hudson river.

Q. Who was the grantee in that conveyance? A. The United Oil Company.

Q. Now, the next one? A. The next one is June 27, 1901, New York Transit Company. That is about 1,600 feet north of the Bull Ferry tract. That was made at a consideration of $10,392.00, or $60.00 a foot.

Q. Now, give us the next, that was in 1901? A. Yes, sir; six years later.

Q. This apparent benefit that came from this Edgewater grant hadn't yet shown itself? The license hadn't been made yet? A. No, it was not made until 1903.

Q. That price obtained for the last one in 1901 of $60.00 per foot, as against $69.00 per foot obtained in 1895, how do you account for that, if you know? A. I have no explanation—I have no recollection of the consideration that led the Commission to make that price.

Q. You still feel that in a mere distance of a thousand feet, there ought not to be any difference in price? A. Unless there is some difference in the area of land comprised, and there is none in that for that section, for about a mile north of Bull Ferry the exterior line for improvement is practically parallel with the shore line and the same distance out. So that I presume the further north you go, of course, the less valuable the land would become, because the same reasons, towage and ice, and perhaps the back land may not be so advantageous, may be steep and rocky, and those questions would have to come into consideration.

Q. At present you know of no reason for the change, a reduction of nine dollars per front foot? A. Not in that case or locality.

Q. The next one? A. January 28, 1903, the Water Front Improvement Company, that is adjoining the New York Transit Company.

Q. What was it per foot on that? A. $60.00.

Q. So that in two years' time the property immediately adjoining was sold for practically the same rate? A. Yes, sir.

Q. No increase apparently shown yet in value by the sales there?

SENATOR MINTURN.—Was there any increase in the upland in the same time?

A. Any increase in value?

Q. Yes. A. My recollection of that locality is that there was no movement along that front toward improvement during that time.

Q. Riparian lands were growing less all the time? A. I mean upward movement.

Q. Can you give any reason why the grant in 1895 to the United Oil Company should have been at $69.00, and in 1901, the New York Transit Company for land further south $60.00, and in 1903, the Water Front Improvement Company for $60.00? A. Well, the circumstances attending the grant, I remember, now that my attention is called to it; it was tied up in a way to the grant to the Morris Building Company, which I was just about to refer to, that was made in 1900. The Morris Building Company was a grant made about 3,000 feet north of the Bull Ferry grant that was made in 1900.

Q. What was gotten for that? A. That was made at $40.00 per foot, but the circumstances under which that was made were explained by the Chairman of the Commission at the last sitting of the Committee. The price was made $60.00 per foot, upon the condition that the company should spend some considerable sum of money, a half a million of dollars, I think, and the Chairman of the Board stated they had spent some two millions or more. They were to have a rebate of $20.00 a foot, which resulted in the grant being made at $40.00 per foot; and I see the Water Front Improvement Company grant, made in 1903, was made at $60.00 per foot, but the applicant in that case was interested in the application of the Morris Building Company in 1900, and his claim was that the Board had promised him, or practically agreed, or rather, that the application was before the Board, and was subject to the same conditions as that of the Morris Building Company, and that in 1903, when he finally came in and got it, that he was entitled to the rate of $60.00 per foot. He didn't claim the $40.00 per foot rate because he didn't propose to make any improvement, but he did claim that he was entitled to the $60.00 rate that was made to the Morris Building Company.

Q. And the Board accepted the claim? A. Yes, sir; which made it at the $60.00 rate.

Q. Take the next one. A. In 1893, May 11—you see the dates go far back because the statement is not in the order of dates, but in the order of location. In 1893 a lease was made to the New York, Susquehanna and Western railroad, which has since been converted into a grant. The axis of that grant is about a mile north of Bull's Ferry, and the grant was made at $53.00 a foot in 1893.

Q. What is next? A. The next one was made to John Ellis and Company, July 30, 1896.

Q. Where is that? A. That is pretty nearly a mile and a half north of Bull's Ferry, and was made at $87.00 per foot.

Q. In 1893? A. In 1896.

Q. Can you explain why there is such discrepancy there? A. The impression in my mind and the fact in my mind is that Governor Griggs, who was governor at that time—I remember distinctly his attending a meeting at which that price was fixed, and it was his idea that the water front was very valuable, and I am sure it was through his influence largely that the price was fixed at that rate. I remember distinctly that was the case.

Q. Now, won't you tell the Committee again about where that location was? A. That is about a mile and a half north of Bull's Ferry.

Q. Is that the northmost grant that we have had yet? A. Yes, sir; that is the northernmost grant.

Q. So up to date we have gotten the highest consideration for the northernmost grant? A. Yes, sir.

Q. And that was in 1896? A. Yes, sir.

BY SENATOR MINTURN.

Q. About opposite where was that grant, what upland? A. It is just north of the Susquehanna and Western Railroad tunnel, it adjoins the terminal water front of the New York, Susquehanna and Western on the north.

BY THE ATTORNEY-GENERAL.

Q. Can you tell us where in Manhattan, that would be? A. I should think about opposite Grant's Tomb—would it not, Senator Wakelee?

SENATOR WAKELEE.—Yes, a little south of that?

A. Yes; I think if anything a little south of Grant's Tomb, perhaps opposite the Soldiers' Monument.

SENATOR WAKELEE.—I think about there.

BY THE ATTORNEY-GENERAL.

Q. What is the next one? A. The next in point of time is the license that has been referred to, to the Fort Lee and Edgewater Railroad, that extends from the Winterburn property at Edgewater, which is a very short distance north of the last grant referred to, extending from that point north to pretty near Fort Lee.

Q. And just to have it in mind in connection with the last one, what was received forthat? A. $1,500 was the consideration.

Q. For a front foot? A. For a mile and a half, and the price about $500 per acre.

BY SENATOR MINTURN.

Q. $1,500 per foot? A. No.

THE ATTORNEY-GENERAL.—No, for the whole thing.

BY THE ATTORNEY-GENERAL.

Q. Is the Edgewater and Fort Lee R. R. one of the Erie lines? A. I judge it is.

Q. Who presented the application to the Board for that? A. The application was originally presented by the land officers of the Erie Railroad Company, Von Mosiski, and that application was withdrawn, and then presented in the name of the company receiving the application, presented by Mr. R. O. Babbitt in the name of the Edgewater and Fort Lee Railroad, and so carried through.

BY SENATOR MINTURN.

Q. Was that presented for a trolley line? A. No, for a steam railroad.

Q. Practically part of the Erie Railroad system? A. I judge it is; the license provided that the road shall be in operation from the Susquehanna and Western Railroad to the north end of the license, within two years, so that I imagine it is an Erie Railroad dependency.

BY THE ATTORNEY-GENERAL.

Q. Do you recall any reason why the application was first presented by Mr. Von Mosiski, and withdrawn and subsequently presented by Mr. Babbitt? A. I don't know of any official reason. I don't know any reason. As I recall the circumstances, the suggestion was that the application coming from the Erie Railroad would excite comment, and the Commission would be likely to charge a much higher price than if it were not so pretentious an organization back of it.

Q. Is it customary to have applications presented and withdrawn and re-presented in the name of another applicant? A. It is customary, and the Commission regard it as perfectly proper to allow an applicant to withdraw his application and change it. It often happens that an applicant makes application and finds that he has not the title, and the title is in the course of change, or in somebody else, and then the person who has the title will substitute his application for the one already in. This application never was presented—if it had been, if the Erie Railroad application had been presented, it would have been a matter of record in the office; but you asked the question what the circumstances were, and I am bound to tell you under my oath.

Q. To vary the monotony a moment, what has been the practice of the Board ever since your connection with it in regard to applica-

tions when thus presented? For instance, I appear before the Board today on behalf of John Jones and ask for a grant or lease. I sign a written application. A. Yes, sir.

Q. What is then done? A. The application is then presented to the Board by the secretary in the order of the business of the Board; the application is presented and the locality is explained to the Board, and then the Board takes it up and considers it and fixes the price, and then the applicant is notified of the price fixed.

Q. What legal formality is gone through, for instance, in the event of being necessary to notify the owner of the upland; how does the Board become aware who the owner of the upland is? A. The applicant is obliged to present with the application—or before the grant is made, he is obliged to present an abstract of title by a title company or somebody, that he is the owner of the upland. If he cannot do that, then he cannot get any further with his grant and if he is not the owner of the upland, and desires to apply as a non-riparian owner, he is obliged to show to the satisfaction of the Board, that he has notified the upland owner, and the upland owner has been given notice and has not appeared before the Board, and that six months have elapsed.

BY SENATOR MINTURN.

Q. Suppose a street intervenes between the owner of the upland and the riparian rights; what notice is given to the municipality? A. Do I understand a street parallel with the shore?

Q. Yes, take the case in Weekawken, shown on this map; this map shows a street parallel with the Hudson River below the King estate; that, I know, was an old traveled highway known as the Bull Ferry Road, and was kept up by the public as such, and runs up into Bergen County and connects with the Bull Ferry up there; grants and leases have been made according to this map to various people fronting on that road, east of the road; was there any notice given by the Riparian Commission to the municipality owning and controlling that road, that applications had been made for those grants? A. I know the history of that road very well; a good many years ago I did considerable work for Mr. King, who claimed that the road was such a road as you describe, and the Railroad company acted as though it was not, and built their tracks over and close up to it; but as a general proposition, the legal advice to the Board has been, and it has been their practice not to regard a road running parallel with the shore as interfering in any way with the rights of the upland owner. If the road comes down and terminates at the shore, then the Commissioners are careful not to make a grant at the foot of that, but such a road as this, running some

little distance from shore—it could not very well run along the shore because it was irregular and rocky in its outline that a road could not run along the high water line ; and so I am sure there was no notice given or required by the Commission, and the Commission never considered such a road as giving any right to the municipality as the riparian owner.

Q. In the case of that road I know that high water mark extended up to the road, because I have swam there many times. You make a distinction of a road running parallel, you give no notice then? A. No.

Q. In the case of a road running at right angles you give notice? A. Yes.

Q. Do you think you have done that in any case in Hoboken? A. That was before the time of the present Commission.

Q. I think not; you granted a right in Hoboken in the streets running at right angles and never gave any notice to the city, and I think you have done the same thing in Jersey City. A. I think no grants have been made in Hoboken through the present Board.

Q. I don't mean the present membership ; I mean since 1869? A. I don't mean to quibble ; I thought you referred to the present Commission.

Q. I have a grant in mind made in— A. 1872?

Q. No, in the eighties; were you in the Board then? A. I haven't the Hoboken sheet, because there are no lands belonging to the State there.

Q. I think there was a grant made by the Riparian Commission to the Hoboken Land Improvement Company about 1893 or 1894, of the land immediately in front of Hudson Square Park, which at that time went down to the high water mark on the Hudson River, and does still, and there was no notice given to the city in that case of the application. A. I remember that grant to the Hudson Land and Improvement Company in front of Hudson Square. That was the subject of very careful consideration by the Board, and the city joined in the application.

Q. That is not so. A. And the grant had some restrictive clause in it, and it was not a grant such as could be used in any way that would destroy the uses, so considered by the Commission, of the Park. There was some arrangement by your City Fathers by which that grant was made, but it was well understood by everybody that the grant was being made.

Q. No ; it was not understood by anybody connected with the city that the grant had been made until I accidentally learned of it, and I telegraphed to Governor Green not to sign the grant until I could

be heard. I came down to Trenton, saw the Governor, saw the grant, and the Governor asked me to notify Governor Abbett to meet me in the Chancery Chambers, Jersey City, and argue the matter out. We spent a day there arguing it out, and the result was that the Governor refused to make the grant. Then the city authorities, with Colonel Stevens representing the Hoboken Improvement Company, got together and agreed that the company should not get that grant, and it was not made; but the city did waive its right to the grant in front of the streets that the company at that time wanted and which were included in that petition. That is the history of the case, and I merely mention it because you say it is the practice to notify a city when the street runs at right angles to the water, to notify the city. I know it has not been done in Hoboken. A. That is the practice of the present Board, and I am sure that the Riparian Commission's record would disclose the fact that those two grants of a hundred feet, one on the north and the other on the south side of Hudson square, were very thoroughly canvassed by everybody. Mr. Bedle appeared as attorney for the Steamship Company, and the city was a party. I think, Mr. Cloke was a member of the Board at that time. It was a matter of great notoriety.

Q. The Hudson Square Park? A. Yes.

Q. I think you will find you are all wrong about that; the facts are just as I stated them to you. A. Suppose I look up the record?

Q. Because I drew the agreement afterwards between the Hoboken Land and Improvement Company and the city.

MR. CLOKE.—If that was in Governor Green's time it was before I was a member of the Board.

SENATOR MINTURN.—Of course I don't say that the present members of the Board were in then.

MR. CLOKE.—I know a question like that came up later, a question of the Park right and the steamship companies were involved, and we threshed out the matter, but I think the Senator refers to another case.

SENATOR MINTURN.—The steamship question came up long afterwards.

BY THE ATTORNEY-GENERAL.

Q. I suppose you give notice to whomsoever you are advised by your counsel to notify? A. Of late years when there is a street involved in the application we notify the municipality.

Q. Who advises the Board as to the proper persons to notify on an application, when the applicant was not the riparian owner, the counsel? A. The law; the law is very explicit.

Q. I understand that, the question is, how you knew who was the person to notify? A. In each case?

Q. In any case? A. That is disclosed by the applicant.

Q. Suppose he tells you a lie. In other words, you take the abstract of title; to whom is that referred? A. To the Attorney-General.

Q. Before the Attorney-General had charge of it? A. To the counsel of the Board. Perhaps I don't catch your meaning; before 1893 there were attorneys in different parts of the State, different riparian counties, different attorneys to whom the applications were referred, who advised on the question of title. Now, in 1893, Mr. Record was appointed to do that work.

Q. General counsel of the Board? A. Yes, sir.

Q. And he continued until by creation of the Assistant Attorney-General, the work was turned over to the department? A. Yes, sir.

Q. Therefore, when an application is made and an abstract of title presented, the abstract of title was presented to the legal adviser of the Board for advice as to who was the proper person to notify? A. Yes, sir.

Q. Or whether the applicant, was or was not the owner? A. Yes, sir.

Q. Was any emolument or fee paid the counsel by the applicant for that work during this time? A. During that time?

Q. Down to the time when the Attorney-General's Department took hold of it? A. Yes, sir; there was a fee paid to the general counsel.

Q. By whom? A. By the applicant, by the grantee.

Q. For what purpose? A. I presume it was in compensation for searching the title.

Q. Now, take up the next grant on the list. A. The next grant in point of locality is April 14, 1903, to John Eisele.

Q. Where is that? A. I will now shift the reference point to Pleasant Valley, or rather, the Hundred and Thirtieth street ferry, and Eisele's grant was about one-third of a mile south of that point.

Q. How near to the Hudson county line? A. About two miles north of Bull's Ferry, Hudson county line.

Q. That was in 1903; what was the consideration for that? A. $60.00 per foot.

Q. What was the next one? A. The next was made October 21, 1903, to the Knickerbocker Sugar Refinery Company, and was immediately adjoining the Eisele grant, and was made at $40.00 per foot, and was made under that same condition or idea explained by

the Chairman of the Board. The price was $60.00 per foot, and the promise of the applicant was to erect a plant, to expend a certain amount of money, which he did, and the grant was made at the reduced rate of $40.00 per foot.

Q. I notice that in 1900 a grant was made to the Morris Building Company at the rate of $40.00 per foot, and in 1903 a grant was made to John Eisele at a rate of $60.00 a foot ; will you compare the water depth and availability of those two grants ? A. The grant to the Morris Building Company is about a mile and a third further down the river than the Eisele grant.

Q. How does it compare as to eligibility ? A. It has about twice the area of land under water per front foot, and it is, in my judgment, very much more eligible and valuable a piece of water front than the Eisele, in one particular, that the back land is valuable. It has no public street running along the shore, which the Eisele grant has ; a street running directly along high water line. The Eisele grant has a residential property back of it and is high, while the Morris Building Company's grant is in a locality where almost any kind of an industry might be carried on without offence to the surrounding country. I think the judgment of the present Commission, as evidenced by their rate, is that the land under water in the locality of the Morris Building grant is worth pretty nearly twice as much as that, or at least one-third more than that where the Eisele grant is situated.

Q. And yet the state got $60.00 per foot for the Eisele grant and only $40.00 for the Morris grant ? A. The state got $60.00, I won't say that—the state made a rate of $60.00 for the Morris building grant, and rebated $20.00 on the company erecting this enormous plant there, reducing it to $40.00.

Q. Is the same true of the Knickerbocker Sugar Refinery Company grant, which is next in order of time ? A. The same thing is true as to locality, and the same comparison holds good that I have made between the Eisele grant and the Morris building grant and Knickerbocker Sugar Refinery Company grant was made at $60.00 and reduced to $40.00 on the same plan that the Morris Building Company was.

Q. But even on any such theory of a reduction for building purposes, on the adoption of the chromo system, there is no explanation that you have yet given, as I understand, for calling them worth the same amount, because you have said one is worth at least a third or double the other ? A. No, I have no explanation to make of that.

Q. The Knickerbocker grant was in October, 1903 ? A. Yes, sir.

Q. Now, we will take up the next one, please. A. The next one in locality was made January 10, 1905, and is at Pleasant Valley.

Q. To whom? A. And was made to C. F. McKenna.

Q. At what rate? A. At the rate of $43.00 per foot.

BY SENATOR MINTURN.

Q. Was he the owner of the upland? A. Yes, sir.

BY THE ATTORNEY-GENERAL.

Q. The next grant you have on this list is which? A. The next grant is that made to John M. Goetchius, September 25, 1901.

Q. Where is that? A. That grant is a mile north of Pleasant Valley, and indeed, is in front of Fort Lee. It is a grant of about 2,600 feet front and comprises about sixty acres of land under water, out to solid filling line.

Q. How much was the price of that? A. The consideration for that was $50.00.

Q. $50.00? A. Yes, sir; the circumstances of that grant—

BY SENATOR WAKELEE.

Q. You mean a foot? A. No, sir.

BY SENATOR MINTURN.

Q. For the whole tract? A. Yes, sir.

Q. How do you explain that? A. The records of the office show that an application was made by Mr. Goetchius' attorney.

Q. Who was he? A. R. O. Babbitt.

Q. Of Jersey City? A. Yes, sir.

Q. The same Babbitt? A. The same attorney; he presented the application and made a claim. Of course, most of these detail matters come to the secretary before they reach the Commission, because that is what he is there for, and I only speak of that as you ask me what the circumstances are and as they come to my mind. My recollection is that Mr. Babbitt came to me and stated that he wanted to get the state grant for that land under water, and he wanted it for nothing, which seemed to me a piece of humor on his part; but I looked at his proposition, which was that he had the legislative grant, and my lay understanding of the law was that where a person has a legislative grant that he might under the law of 1869 obtain a riparian grant or a paper capable of being recorded, upon the payment of a rental of $3.00 a foot, or a fee of $50.00 per foot front.

Q. That is expressly provided in section what? A. It is the act of 1869, and I so informed him, and he demurred.

Q. Section 24 of the act of 1869? A. He still said he wanted to get it for nothing, and I said my work was simply that of engineer-

ing, and he would have to box that out with the counsel of the Board.

BY SENATOR MINTURN.

Q. What year was that? A. September 25, 1901.

Q. And the counsel was then? A. Mr. Record was the counsel of the Board. I told him that was a legal proposition, but as far as I know there was no way out, but that he would have to pay $50.00 a foot; the result was that Mr. Record gave the Board an opinion that the act under which he wanted the grant was perfectly good, and the Board made the grant for $50.00. That was the consideration that they fixed for the grant on that advice.

BY THE ATTORNEY-GENERAL.

Q. What was the name of that, if you know? A. The land under water was originally included within the Annett lease, which then and still owes the State some several thousand dollars for rentals.

BY SENATOR MINTURN.

Q. Was this grant in the form of a lease? A. No, it was a grant.

THE ATTORNEY-GENERAL.—I think, with the permission of the Committee, I will spread on the minutes Section 4 of the Act of 1869.

"And be it enacted, that in case any person or corporation, who, by any legislative act, is a grantee or licensee, or has such power or authority, or any of his, her or their representatives or assigns, shall desire a paper capable of being acknowledged and recorded, made by and in the name of the state of New Jersey, conveying the land in the proviso to the third section mentioned, whether under water now or not, and the benefit of an express covenant, that the state will not make or give any grant or license, power or authority affecting lands under water in front of said lands, then and in either of such cases, such person or corporation, grantee or licensee, having such grant or license, power or authority, his, her or their representatives or assigns, on producing a duly certified copy of such legislative act to said Commissioners, and in case of a representative or assignee, also satisfactory evidence of his, her or their being such representative or assignee, and requesting such grants and benefits as in this section mentioned, shall be entitled to said paper, so capable of being acknowledged and recorded, and granting the title and benefits aforesaid, on payment of the consideration hereinafter mentioned * * * upon his, her or their securing to be paid to the state an annual rental of three dollars for each and every lineal foot measuring on the bulkhead, or a conveyance to such grantee or licensee, or corporation having such grant,

license, power or authority, and to the heirs or assigns of such grantee or licensee, or to the successors and assigns of such corporation, in fee, upon his, her or their paying to the state fifty dollars for each and every lineal foot measuring on the bulkhead line, in front of the land included in said conveyance."

BY ATTORNEY-GENERAL.

Q. That is the act to which you referred a short time ago? A. Yes, sir.

Q. Have you with you the record of the Board in reference to this Goetschius' grant? A. I haven't that with me.

Q. What paper have you here in connection with that matter? A. I haven't any record from the office in connection with that, and that merely appears in this list that I sent Governor Stokes at his request, October 31, 1905.

Q. Why, then, didn't the Board, so far as you know, receive either the $3.00 per lineal foot, or the $50.00 per lineal foot in consideration of a grant for this property ? A. I have no opinion on that subject, Attorney-General.

Q. Did the Board receive legal advice upon this subject? A. Yes, sir ; a written opinion.

Q. Is that on file ? A. Yes, sir.

BY SENATOR MINTURN.

Q. Was this the application of a licensee or a grantee under any legislative act? A. Yes, sir ; he presented with his application—he annexed a copy of the act, that is why I advised him.

Q. Made to him expressly ? A. No, made to Annett, his predecessor in title.

Q. And he held a conveyance from Annett? A. Yes, sir.

BY THE ATTORNEY-GENERAL.

Q. Can you tell us whether it is true or not that there is a large arrear due the state on that Annett grant and has been for years ? A. There is such large arrears of rentals due, or were due up to the time this grant was made, and what the effect of this grant on the state's claim is, I haven't any idea.

Q. As a matter of fact, has anybody ever paid the state a dollar, so far as your records show, on account of that old Annett lease? A. I can't speak of that, because the Riparian Commission do not keep a record of the rentals as paid ; but the Riparian Commission some years ago received from the State Treasurer a list of leases, the rentals of which were unpaid, and my recollection is that if any rentals were paid on the Annett lease, very few were paid after 1874.

THE ATTORNEY-GENERAL.—We expect to prove by the

State Treasurer's Department, that it has been notorious that no—I think I am accurate in saying that—that no rent has been paid at all to the state on account of this Annett grant, and that had been notorious at the time this grant was made. We shall show that.

A. The matter was in course of collection by Mr. Record; at that time he was attorney for the state.

BY SENATOR MINTURN.

Q. Why was not that made part of the consideration of the grant, the payment of this arrears due to the state?

SENATOR WAKELEE—You haven't the figures here?

MR. DUFFIELD.—They nearly doubled the original amounts.

SENATOR AVIS.—Was this rent due by the act of the Legislature?

MR. DUFFIELD—No, my thought is it was not.

A. No, it was a riparian grant.

BY SENATOR AVIS.

Q. There had been a riparian grant subsequent to the legislative grant? A. Yes, sir; in 1874.

Q. And the arrears were due on that? A. Yes, sir; and they were in course of collection.

Q. Was there any reservation in the legislative grant? A. The original legislative grant?

Q. Yes, was there any reservation of rent? A. No.

BY SENATOR MINTURN.

Q. The legislative grant I presume was simply a right to wharf out or something? A. Yes.

BY SENATOR AVIS.

Q. Not giving any title to the property? A. No, it didn't disclose what the conditions were.

Q. Then this was on the riparian lease executed in 1874, that the arrears of rental were due? A. Yes, sir.

THE ATTORNEY-GENERAL.—We will show later, that on the 18th of April, 1874, a lease seems to have been made to James Annett, which is on the same property, for the principal sum of $7,850.00. The rentals due on this were paid generally to 1875, or about one year, and that from that time on for thirty years, no payment has been made.

SENATOR AVIS.—The amount to be paid would be 7 per cent. on that?

THE ATTORNEY-GENERAL.—Exactly, and nothing has been paid on that at all since 1875. We shall further show that at the time this Goetchius' grant was made which Mr. Payne has been testifying about, the then Attorney-General, in connection with the

counsel of the Board, were both endeavoring to collect these rentals.

SENATOR WAKELEE.—Which were all waived and the principal sum fixed at $50.00?

THE ATTORNEY-GENERAL.—I don't know that they were waived, but they were not insisted upon.

SENATOR MINTURN.—I would not think they were waived.

At this point a recess was taken of one hour.

JOHN C. PAYNE resumes. Examined by Senator Avis.

Q. Mr. Payne, when did the Board of Riparian Commission employ a general counsel? A. In 1893.

Q. Did you ever have more than one general counsel? A. No, sir.

Q. Mr. Record was general counsel during the entire period from that time up until the Legislature created the department of Assistant Attorney-General? A. Yes, sir.

Q. What was the salary during all that period? A. $1,500 per year.

Q. Was there any legislative action, so far as you know, which authorized the Board to employ a general counsel? A. No, sir.

Q. Where did they get the money to pay this salary; was it appropriated by the Legislature? A. Appropriated by the Appropriation Committee; set apart.

Q. Was it set apart for salary of counsel, in that name, or under a general head? A. No, sir; it was a lump sum that was appropriated for the expenses of the Riparian Commission.

Q. You say you paid $1,500 a year, was there any other compensation in the nature of fees that the general counsel of the Board obtained or was paid? A. There was; the general counsel in addition to the $1,500, charged varying sums for each grant, charged the grantees varying sums, sums varying from ten dollars to twenfive and thirty-five dollars, I think.

Q. For the examination of the title? A. That is what it was supposed to be for.

Q. Was the amount charged in those instances fixed by the Riparian Commission? A. No, sir; I imagine the Riparian Commission knew nothing of it.

Q. Was there any fixed fee to be paid by the grantee or applicant for a riparian grant or lease, by the Riparian Commission? A. No, sir.

Q. They never took any action? A. No, not on that question, whether they knew that such a thing was done or not.

Q. Was any money paid to the Riparian Commission or to the Treasurer of the Commission by the applicants for riparian grants, except the amounts fixed in the leases or grants? A. No, sir; those amounts were paid to the secretary of the Board by checks to the order of the State Treasurer always.

Q. Did those checks include the fees charged by the general counsel of the Riparian Commission? A. No, sir.

Q. Is there any record, any written record of your department, as secretary of the Riparian Commission, showing the amount of money paid in fees by the grantees to the general attorney or counsel for work performed under these applications? A. Other than the yearly salary?

Q. Yes. A. The letter books of the Commission will show in each case what fee was charged by the counsel. The practice was to send a notice to the grantee that the grant was ready upon the receipt of two checks, one to the order of the State Treasurer for the consideration in the grant, and one to the order of Mr. Record for the amount of the fee that he charged.

Q. Who sent that letter? A. I did.

Q. At whose direction did you put in the amount of fees charged by Mr. Record? A. Mr. Record.

Q. You were not directed to do that by the Riparian Commission? A. No, sir.

Q. And that fee varied from ten to thirty-five dollars? A. Perhaps thirty-five; perhaps as high as fifty in some cases.

Q. That, as I understand, was paid directly by check to Mr. Record, which came to you? A. Yes, sir.

Q. With the check for the State Treasurer for the grant, and you turned one check over to Mr. Record and sent the other to the State Treasurer? A. Yes, sir.

Q. What clerical assistance did you have in the office at Jersey City? A. The office was, perhaps, a little peculiarly conducted; it grew up; Mr. Bacot was the engineer and secretary for a long time, and during his incumbency of the office he got $5,000 a year, and then there was a clerk who got some $600, I think, and I was the assistant engineer and got $1,500 for a time, and then it was increased to $1,800. I speak of this to show you the growth of the management of the office. Then, during Governor Griggs' term, Mr. Bacot, who was becoming aged, resigned the position of secretary and I was appointed secretary and assistant engineer, at the same salary, without any increase of salary, but Mr. Bacot's salary was reduced, I think, to $2,000 a year, and then Mr. Bacot resigned the engineership, and I was made the secretary and engineer, and

the clerk was dispensed with, and my salary was made $2,500, I think, and I was obliged out of that to pay for all clerical help I needed, which was considerable ; I had to have writing and that sort of thing done. That continued for a year ; when the Commission paid me $3,500, and out of that I still paid for the clerical help of the office and whatever expenses were necessary, up to pretty near the end of Governor Murphy's time, and I brought the matter to the attention of Governor Murphy as Chairman of the Board, and to the members of the Board, and Governor Murphy's idea was, that it was not, perhaps, fair to charge me, or credit me with a certain salary out of which I had to pay the expenses of the office ; and from that time, which was the latter part of Governor Murphy's term, the Commission then made provision to pay a stenographer and clerk, which before that time I paid, and from that, the last two or three years, there has been provision made to pay a stenographer and clerk, one person acting in that capacity.

Q. Prior to that time the compensation of any assistants that you had in the office was paid out of your salary ? A. Yes, sir ; I did the work and paid for whatever additional service I found necessary.

Q. What were the duties of the general counsel ? A. That is a difficult question to answer. The duties were—the reasons as I remember, for appointing the general counsel were, that previous to the time Mr. Record was appointed, in 1893, the applications were referred to these attorneys in the different riparian counties, and it resulted in a great deal of delay. Sometimes Mr. Bacot would not be able to get the papers for months, and the cases would be delayed, and then I remember there was some effort, political effort, made to place Mr. Record ; some recognition of Mr. Record, which was, as I gathered from my knowledge of the work of the office and the surroundings—and there was some talk—Mr. Bacot was a partner of Mr. Record's, and there was some talk of his being Attorney-General or something of that kind, and my recollection is that this appointment was in recognition of Mr. Record, and he was made the general counsel, and all of the attorneys were dispensed with all over the state, and from that time on the papers were prepared in the office.

Q. Where is the office in Jersey City ? A. In the Commercial Trust Building.

BY THE ATTORNEY-GENERAL.

Q. Then the principal duty of the counsel was to examine these titles ? A. That I conceived to be the controlling motive for appointing a general counsel, to save this delay and loss of time ; and

I neglected to say that Mr. Record always met with the Board and took a very active part in the discussion, and the discussion of the price, and any matter that came up before the Board. Mr. Fisk had been connected with the Board for a long time; and he and Mr. Fisk practically took the greater part of the time in discussing the matters before the Board.

Q. How often does the Board meet? A. The last Thursday in every month, and as much oftener as there is business to bring them together, and it often happens that there is a meeting every week.

Q. Mr. Record's office and the Board's office were coincident for a number of years? A. For a number of years when we were in the Fuller building, when Mr. Bacot was there, Mr. Bacot had one room, and Mr. John Bacot had another; Mr. Record had another, and the riparian commission had a draughting room, and they used to meet in Mr. Bacot's room.

BY SENATOR AVIS.

Q. Pardon me, in that instance, did the Riparian Commission pay rent of the entire office? A. No; there, as in the Commercial Trust Building, the Riparian Commission paid half the rent, and then we went to the Commerical Trust Building, and the arrangement was, there were four rooms, one was a large room that Mr. Record used for his room, and in which the Commission met as there was a meeting, and then there was a small room that the Secretary of the Board used exclusively for the work of the Commission, and then there was an entrance room that was used jointly by Mr. Record and for the work of the Commission, and then there was a fourth room that was used exclusively by Mr. Bacot for a time, but after a while some use was made of it by the Riparian Commission.

Q. Who paid the rent at that time? A. The rent was divided for a time equally. Then there was a different arrangement made, and the Commissioners paid about two-thirds of the rent, and about two-thirds of the expenses of the stenographer.

Q. And Mr. Record paid the one-third? A. Yes, sir.

Q. You used the stenographer jointly? A. Yes, sir.

Q. And during the first period of the time that you used the stenographer jointly, who paid for her services to the Commission? A. I did; up to two or three years ago, I paid all expenses of that kind.

Q. And during that period did Mr. Record use your stenographer? A. She was the same stenographer, did the work of the entire office.

Q. You mean to say this was Mr. Record's private professional office during all this time? A. Yes, sir.

Q. That is where he did his private business? A. Oh, yes; that was the only office he had, and that was his office.

Q. And his salary was what? A. $1,500 a year.

Q. I understand the actual work that Mr. Record did during this period was to furnish you opinions when requested? A. Yes, sir.

Q. Caring for these titles, for which he charged an additional special fee to the grantees, and to meet with the Board of Riparian Commission? A. Yes, sir.

Q. Which latter thing he did and took an active part, as active as the Commissioners? A. He took a very active part; it is Mr. Record's manner and method to take an active part.

Q. How many opinions, from your recollection, did he furnish the Board annually, on an average? A. Legal opinions?

Q. I am speaking of legal opinions entirely. A. Legal opinions, I can recall but very few.

Q. As many as two annually? A. Not more, I think.

BY SENATOR MINTURN.

Q. I suppose he furnished them as often as they were asked for? A. Yes, and usually the matter—if it was a matter of importance—would be referred to the counsel of the Board and the Attorney-General.

BY SENATOR AVIS.

Q. Have you any record except in these letter books, as to the amount of fees paid by the original grantees to Mr. Record as counsel for the Commission? A. I haven't a complete record. I have a record amounting to some $7,000.

Q. During what period about? A. I think from 1897 to 1904.

Q. Seven years, the fees about $7,000, or about a thousand a year? A. Yes, sir. I want to say up to November 25, 1905, I paid the clerical expenses out of my salary.

BY SENATOR WAKELEE.

Q. You mean to say that Mr. Record used that office and the clerk paid by you, for his personal law business? A. He paid part since the Commission have been paying for the services of the stenographer and clerk, the Commission, for instance, paid $35.00 per month and Mr. Record paid $25.00, that was the division. Before that time we divided the payment of the clerk into three parts; while Mr. Bacot was there I paid one-third, Mr. Bacot one-third, and Mr. Record one-third. That happened to be the arrangement we had.

BY SENATOR MINTURN.

Q. I don't understand what these fees were charged for; were they charged under any arrangement that Mr. Record had with the

Board ; that he might get something extra from those who made application to the Board ? A. No, there was no arrangement with the Board ; the Board was not a party to it.

Q. You drew the bills ? A. Yes, sir.

Q. What was the charge made for, what kind of services ? A. For the cost of preparing the papers.

Q. What papers were there to prepare, simply the deed, was it not ? A. Yes, sir.

BY SENATOR AVIS.

Q. And the examination of the title ? A. Yes.

Q. The title to the upland ? A. The charge was for examination of title and preparation of the papers.

BY SENATOR WAKELEE.

Q. The applicant had to furnish the abstract, and he simply went over that ? A. Yes, that was the theory.

BY SENATOR AVIS.

Q. Where are your offices now ? A. In the Commercial Trust Building.

Q. In conjunction still with Mr. Record ? A. No, sir ; when the present Board came into office, the Board desired to have offices apart from Mr. Record, but I believe Mr. Record's lease hadn't expired—I think that was the reason, I think there was some outside understanding, that the Commission should continue as tenants of Mr. Record up to the time his lease expired ; the Board felt, I believe, that it would not be fair to leave him, having gone there with that understanding, and saddle the expense of the entire office on him, but since the first of February, the Commission have a suite of offices entirely for the use of the Commission.

Q. February 1st of this year ? A. Yes, sir.

Q. Then from the time the act was passed creating the office of Assistant Attorney-General until February, 1906, they still occupied the office jointly ? A. Yes, sir.

Q. Under the same arrangement as to rent ? A. Yes, sir.

Q. And also as to the stenographer ? A. Yes, sir.

BY THE ATTORNEY-GENERAL.

Q. We finished up, I think, with the Hudson river ? A. Yes, sir.

Q. You look upon that as the most valuable ? A. Yes, sir ; I think the commission regards the Hudson water front as being the most valuable and available. New York bay is valuable, but there are peculiarities about it that render it not quite available.

Q. Please go to New York bay and produce a map showing what property is still left down there. A. There is still remaining of property in New York bay about 3,800 feet.

Q. Have there been many recent grants on New York bay? A. No, sir; no grant has been made since 1889.

Q. From what point to what point do you include in your division of New York bay? A. From the terminus of the Central Railroad at Communipaw to Constable Hook at Bergen Point in the city of Bayonne.

Q. What price has been received for the grants along that part? A. The price paid for the last grant made on New York Bay was $50.00 a foot.

Q. When was that? A. In 1889.

Q. Give us the other grants and the prices. A. The previous prices were $40.00, $30.00 and $20.00 running back a considerable number of years. In 1874, if my recollection serves me, it was about $25.00. The peculiarity of the New York Bay water front is that it lies—the exterior line for piers, lies back a mile from the deep water—4,000 feet. Some places there is not four feet of water.

Q. Look at your schedule for the property on New York Bay, and see if it has been uniform or variant, and if so, give the variations. A. I haven't that map—I can speak from recollection on New York Bay; it has been a gradual increase from $20.00 a foot—in 1874 part of New York Bay front was included in the omnibus grant to the Central Railroad, which was made at $300,000, which included Communipaw Cove, land on the waters of Kill von Kull and Staten Island Sound; that was a lump sum for an omnibus grant, and it would be diffcult to determine what influenced the Commission in that day in fixing the price, but my idea is, that the prices have been uniformly up to $50.00 in 1889, which is the last grant.

Q. Are there any grants pending before the Board for land on New York Bay? A. No, sir.

Q. With the permission of the Committee, we will pass on to the Kill von Kull. A. The Kill von Kull is a narrow strip of water connecting New York and Newark Bay.

BY SENATOR MINTURN.

Q. Were you a member of the Commission when the Morris Canal grant was made? A. In 1867—no, sir; my connection with the Board commenced in 1876.

BY THE ATTORNEY-GENERAL.

Q. The Kill von Kull extends from Newark Bay to New York Bay? A. From New York Bay at Constable Hook, to Newark Bay at Bergen Point.

Q. That is shown on the map before you? A. Yes, sir.

Q. Is there any land in that section still open? A. There is 2,650 feet.

Q. This is considered very valuable? A. Yes, sir; that is quite valuable. The difficulty with the land on Kill von Kull is that the exterior line for solid filling is coincident with the shore, so they can get nothing by it. The pier line is out only 200 feet, so that is not available for vessels of any length. So that is not available.

Q. Please go through some of the recent grants on the Kill and tell what has been acquired from them. A. There have been varying prices charged on the Kill von Kull. There is a grant made in 1894, a lease, for $50.00 per foot.

Q. To whom? A. To E. F. White and others. Now then, 1900, there was a grant made adjoining, to Babcock and Wilcox, at $25-.00 per foot.

Q. Immediately adjoining? A. Yes, sir; but the circumstances of that grant were the same as outlined by the Chairman of the Board in the Glucose or Morris Building Company. The Babcock and Wilcox Company were a very large industry, and they were at Elizabethport and they wanted to locate at Bergen Point, and the Board, as I gathered from the discussion, thought it was a wise thing to encourage them by making them that price.

Q. Do I understand that the Board in the case of the Babcock and Wilcox Company thought it a benefit to the State to move a factory from Elizabethport to Bergen Point? A. I saw that when I said it, but that is a true interpretation; it was out and I could not take it back.

Q. Was the Babcock and Wilcox grant included in any old grant? A. Although it was not pleaded at the time, I think the Ingham and Jenkins grant covered the land granted to Babcock and Wilcox.

Q. There is a legislative grant, as I understand it, made several years ago, in the fifties, by the Legislature to two persons known as Messrs. Ingham and Jenkins, conveying certain rights, which will appear when we produce the grant, to Ingham and Jenkins; it is that grant to which you refer? A. Yes, sir.

Q. This Babcock and Wilcox grant to which you have just referred, was on the original Ingham and Jenkins grant? A. I so understood it.

Q. It was claimed, was it not, by some people who sought rights from the state that was nothing more due the state on account of the Ingham and Jenkins grant? A. Yes, there was a grant made in which the Ingham and Jenkins grant was pleaded in 1900.

Q. To whom? A. To L. F. Donahue, June 28, 1900, and to that application he attached a copy of the legislative grant to Ingham

and Jenkins, and that was passed upon by the counsel of the Board, and a grant was made on a nominal consideration.

Q. What do you mean by a nominal consideration? A. One dollar.

THE ATTORNEY-GENERAL.—I want to call the attention of the Committee particularly to this: In 1900, according to Mr. Payne, a grant was made to a man named Donahue for one doilar, by the Riparian Commission of fifty feet fro ntage on Kill von Kull on the ground that it was in the original legislative Ingham and Jenkins grant, and that the state had had its consideration, whatever it was, in 1851, when the Ingham and Jenkins grant was made, and that, therefore, there was no reason for further consideration to be paid, and Mr. Donahue, under the advice of the counsel of the Board, was given a grant for nothing. Immediately adjoining is the so-called Babcock and Wilcox grant, a part of the Ingham and Jenkins grant, for which the Board obtained $25.00 a foot.

Q. Was there still a further grant? A. Yes. There were applications for lands in the same vicinity, in which the applicants also pleaded the Ingham and Jenkins legislative grant, but in that case the counsel of the Board decided against the validity of the Ingham and Jenkins grant, and the opinion was concurred in by the Attorney-General. I think the Attorney-General was Thomas N. McCarter at that time, and the negotiations went on until you were Attorney-General. That is the case where you brought the matter to the chancellor, and the result was that the applicant compromised; the case was brought to a trial, however, and before the case was tried the parties got together, and they paid the state some $27,000; about $35.00 a foot.

BY SENATOR AVIS.

Q. This one dollar grant was to whom? A. Lucius F. Donahue.

Q. The counsel of the Riparian Commission gave you an opinion that the old grant of 1851 placed it in such position that the state was not entitled to any more compensation? A. I don't find in that case any written opinion, but I do find in that case a bill for examination of the title by counsel of the Board, and I think, and the fact is, that the counsel of the Board made the grant, or advised it, and it was made in the same way all grants are made, and that was made.

Q. Was the Attorney-General taken into that conference? A. No.

BY SENATOR WAKELEE.

Q. Was it the same counsel that advised both ways? A. Yes, sir, Mr. Record was counsel.

BY THE ATTORNEY-GENERAL.

Q. So that in the Donahue case nothing was had ; in the Babcock and Wilcox case, with the same counsel, $25.00 per foot was had, and in the Guffey Petroleum case, the third, also part of the Ingham and Jenkins grant, about $35.00 per foot was had ? A. Yes, sir.

Q. Who was the counsel for the Donahue applicant ? A. Colonel Fuller.

Q. Who appeared for Babcock and Wilcox ? A. Colonel Fuller appeared at first, and then Lindabury, Depue and Faulks were substituted, and they carried the matter to a conclusion.

Q. Who was the counsel for the Guffey Petroleum Company ? A. Lindabury, Depue and Faulks.

BY SENATOR MINTURN.

Q. These companies, are they subsidiary companies of the Standard Oil ? A. I understood the Guffey company was an opposing interest ; it is an oil concern ; but I understood it was an opposing interest ; but the Babcock and Wilcox is a boiler making concern, machinery, and Dr. Donahue is a resident of Bayonne.

Q. That Guffey grant is now part of the Standard Oil interest ? A. Yes; I think I heard that.

BY THE ATTORNEY-GENERAL.

Q. Was an attorney fee paid in those three cases, do you know ? A. I haven't looked that up specially. I looked to see when you had the case for Guffey Petroleum Company ; all of the cases in the history of that case were looked up carefully because it was prepared for court, and a great deal of work was done, and in that case in looking for an opinion in the Donahue case, all I could find was a request for the money.

BY SENATOR AVIS.

Q. What is the amount in that case ? A. $25.00 I think.

BY THE ATTORNEY-GENERAL.

Q. Won't you come to some other grants in the Kill and give the variation in the rates ? A. Along in 1897, two or three parties along there—that was the time when the bicycle craze was at its height, and some people erected road houses and docks to accommodate the number of bicyclists who went down the boulevard and made that their rendezvous.

Q. That is Bergen Point ? A. Yes, sir ; and they built docks without the formality of getting the rights of the state, and during some of the inspections that were had, the Commission obliged them to come in and fix a rate of $50.00 per foot for those three cases in 1897. In two of the cases the parties found it impossible to keep up their payment, the bicycle trade faded out, and the property is

not valuable, and they haven't paid their rentals and are behind. Still later in 1901 a grant was made in that vicinity for $30.00 per foot.

Q. Where? A. At Bergen Point, at the foot of Humphrey avenue. Some time still later, right in that vicinity, application was made for a grant, and the Board fixed a price of $50.00 per foot, and the applicant caused some investigation to be made, and the Board caused some investigation to ascertain the nature of the bottom, and the applicant refused to take the grant because he could not profitably improve it; because the improvements and the $50.00 per foot were more than he could pay, and he didn't take it. I only mention that, the reason the grant was fixed at $50.00 a foot, and the applicant refused to take it because he could not manage it at that price.

Q. Is there any average price for land along Kill von Kull? A. I should say $30.00 per foot was the average price along there.

Q. Now, let's pass to Newark Bay. A. The Newark Bay front, all along the shore of Newark Bay, Bayonne and the Jersey City shore, up to a short time ago, a uniform price of $5.00 per foot was charged by the Commission. That shore is practically of uniform value. There are some residential sections, and the exterior line for improvements on both sides of Newark Bay are so far back of any usable depth of water, that it is not possible to utilize them without considerable expense, and although the Board have recently raised the price to $10.00 per foot, I think but few grants have been made, except where they wanted to transfer the property.

Q. How much is unsold or undisposed of on the Kill? A. 2,650 feet.

Q. How much on Newark Bay? A. I have put Newark Bay and the Hackensack river and the creeks in Hudson County together, and it is 25 miles.

Q. Undisposed of? A. Yes, sir.

Q. You think that is fairly worth, and so held by the Board, at $5.00? A. It was sold at $5.00, and the Board now has raised the price to ten, and on the Jersey City front $15.00, and then up the river five, three and two; way up the river at Hackensack, where there is no commercial value attached to it.

BY SENATOR MINTURN.

Q. Has not that property come into the market recently? A. Yes, sir; there has been a demand and the Commission has raised the price.

Q. I mean along the Hackensack and the Passaic rivers? A. Yes, sir.

Q. Between Newark and Newark Bay? A. Yes, sir; the Board has raised the price. On the Newark Bay on the Essex side the Board raised the price from five to fifteen dollars, although that price was not accepted and the grant not made.

BY THE ATTORNEY GENERAL.

Q. I would like to go to Staten Island Sound now. A. That is the stream separating Staten Island from New Jersey and connecting the Newark and Raritan Bays.

Adjourned until Thursday morning, August 9th, at 10.30 a. m., at the office of the Riparian Commissioners, on the fourth floor of the Commercial Trust building, Jersey City.

CHANCERY CHAMBERS.

Jersey City, August 9, 1906.

Meeting of Special Committee of the the New Jersey Legislature to investigate the granting of Riparian Lands by the State, &c.

PRESENT.

SENATORS WAKELEE (Chairman) and MINTURN, and ASSEMBLYMEN BARBER, HOLCOMBE and JONES.

ATTORNEY-GENERAL MCCARTER and ASSISTANT ATTORNEY-GENERAL DUFFIELD.

JOHN C. PAYNE resumed. Examined by Mr. McCarter.

Q. Before taking up the undisposed lands on the Hudson river, I would like to recur for a moment to the so-called Goetchius case of

which we spoke the other day ; will you please to remind the Commission, state briefly what the grant was given for in that case? A. The grant comprised about 2,646 feet, and contained about sixty acres of land under water. It was a tract of land under water that was leased by the State in 1874 to the Annett heirs for $16,710.00, and the unpaid rentals in 1901, without interest, amounted to $31.590.00, making the property in debt to the State $48,200.00. The grant was made for $50,00.

Q. When? A. In 1901.

Q. And the land lay where? A. The land lies at Fort Lee on the Hudson river.

BY SENATOR MINTURN.

Q. Was it exclusively between high and low water mark, or did it extend out? A. It extended out to the exterior line for piers fixed by the Riparian Commission.

Q. That was about how many feet for solid filling from the ripa? A. I should think on an average about 900 feet.

BY THE ATTORNEY-GENERAL.

Q. Have you the record, and by the record I mean the papers, concerning this Goetchius' grant with you, that are on file with the Board? A. Yes; I have the office file of the papers in this case.

Q. Have you there a letter from Mr. Record, counsel of the Board, to Senator William M. Johnson, dated February 2nd, 1901, referring to this matter? A. Yes, sir ; I have.

Q. What relations did Senator Johnson at that time have to this Goetchius' application? A. Senator Johnson represented Mr. Goetchius, had been his counsel or attorney, and Mr. Goetchius desired that he should represent him in this matter before the Riparian Commission.

Q. Will you read from that letter of Mr. Record to Senator Johnson so much of it as bears upon this particular question, stating the prices the Commissioners have realized for the land? A. After a general discussion, there is a clause in the letter which reads: "The Commissioners have realized for land under water above Fort Lee, at the rate of $750.00 per acre, and $40.00 per foot front. The land involved in your client's matter is about two acres, which, at the rate mentioned, waiving the charge per foot, would call for the payment of $1,500."

Q. At the time that letter was written, was Senator Johnson negotiating on behalf of Mr. Goetchius for this grant? A. Yes, sir.

Q. Where did you get that copy of the letter from Mr. Record to Senator Johnson? A. From the files of the Board.

Q. Is there an opinion on file dated September 25, 1901, from Mr. Record, the counsel of the Board? A. There is.

Q. Let me see it. A. (Witness handed it to counsel.)

THE ATTORNEY-GENERAL.—I now offer in evidence the opinion of the counsel of the Board, George L. Record, to the Riparian Commission of New Jersey, dated September 25, 1901, and will read it to the Committee and have it incorporated in the record. The foregoing letter to Mr. Johnson, of which an extract has been read, is dated February 2nd, 1901, and this is dated September 25, 1901.

To the Riparian Commissioners of New Jersey.

Gentlemen:

I herewith submit my report and opinion upon the application of John M. Goetschius for a grant of lands under water at Fort Lee.

The property in question lies in front of lands owned by the said Goetschius, which are commonly known as the Annett property. Prior to 1844 Robert Annett, the then owner of the upland, had constructed two wharves upon the land under water included within the application of Goetschius. These wharves were constructed without any license or authority from the state. In 1844 an act of the legislature was passed, a copy of which is hereto annexed. This act recites that Robert Annett was the owner of the said upland and that he had built two wharves, describing the dimensions thereof, and that he desired to extend the same and was unwilling to incur the expense thereof without an act of the legislature confirming him in the right to maintain the wharves already built and to extend the same one hundred feet further into the Hudson river. Section 1 of the said act makes it lawful for said Annett, his heirs and assigns, to keep up and maintain the said wharves. Section 2 makes it lawful for the said Annett, his heirs and assigns to extend said wharves one hundred feet further than they are now into the Hudson river, and also to build, erect, keep up and maintain other wharves if he or they shall deem proper to do so, upon and in front of said lands. The other sections are not relevant to this inquiry. In the case of Michael O'Neill against Robert Annett, decided by the Supreme Court in 1859, the Court held that these particular wharves were private property and were not in any sense public wharves. This would seem to establish the fact that the public had no rights in these wharves and would have none in any that might be built by the said Annett, his heirs and assigns. I think this fact would establish the principle that the Annetts' rights under this legislative act could not be forfeited by non-user. The principle of forfeiture by non-user seems to apply, so far as I can ascertain, to

franchises like ferry privileges, in which the public have a direct interest.

There is nothing in the Riparian acts which directly attempts to repeal any legislative grant. In the repealer of the Wharf Act there is a provision which explicitly provides that the repealer shall not be construed to repeal any grant or privilege theretofore made by the Legislature to any riparian owner. I am therefore of the opinion that the Act of the Legislature hereinbefore referred to, and the action of the Annett heirs and assigns in maintaining the wharves referred to, constitute a grant of an interest or estate in this land under water, which has not and cannot be repealed by the Legislature, and that Goetschius, as the assignee of the rights of Annett, could prevent any grantees of the Riparian Commission from improving in any way the lands under water in front of the upland in question.

Under these circumstances, the rights of the State, if any, to the lands under water are practically without value. In one or two instances under somewhat similar circumstances, as for example in the Donahue grant, it has been the practice of the Board to make a grant for a nominal consideration, and I am of the opinion that such a course should be followed in this instance.

Respectfully submitted,
GEORGE L. RECORD, Counsel.

Sept. 25th, 1901.

Q. The Donahue grant there referred to is the same grant referred to the other day down on the Kill? A. Yes, sir.

Q. Immediately next to which was the Babcock and Wilcox grant? A. Yes, sir.

Q. For which the Board got a fee of what? A. $23.00 a foot.

Q. Under the same title as the Donahue grant? A. Yes, sir.

Q. Now, I ask you to produce a letter from Mr. Record to Senator Johnson, dated February 8, 1901, and quote from as much of that letter as relates to this old legislative grant. A. "The fact is that these old grants of the Legislature were very carelessly drawn, and it is almost impossible to state what they do mean. None of them have ever been interpreted by the courts, and I should be in grave doubt as to what interpretation they would put upon this grant if the same were involved in litigation."

Q. Where did that copy, from which you then read, come from? A. From the files of the office.

Q. Did the Board, under Mr. Record's advice, appeal to the court at all, when this Goetchius grant was under consideration, for inter-

pretation of that old grant which Mr. Record there refers to? A. No, sir.

Q. Please refer to a letter from Mr. Record to Senator Johnson of February 2nd, 1901, in which, at the conclusion, he refers to the probable action in the matter. A. He says: "I presume the Commission will be guided by whatever report I make upon the matter."

Q. Is that a letter taken from the files of the Board? A. Yes, sir.

Q. After the receipt by the Board of the opinion of Mr. Record in which he suggests, assimilating the situation to the Donahue grant, that the grant should be made for nothing, did the Board act on his advice and give it for $50.00? A. Yes, sir.

Q. In connection with the statement of Mr. Record in his letter: "I presume the Commission will be guided by whatever report I make upon the matter," I will ask you, from your observation as to whether or not the advice and judgment and suggestions of Mr. Record were or were not dominant with the Board? A. I Imagine his legal advice was conclusive with the Board.

Q. What have you to say from what you observed, as to how far he controlled the Board? A. Mr. Record was actively associated with the Board before I became closely associated with the Commissioners, and I found he took a very active part in the deliberations of the Board, more active perhaps than any of the Commissioners. In answer to your question I can only say that it was not an infrequent thing for Mr. Record to say that he controlled the Board. How much of vanity there was in this or how little of truth, I can't say. That state of mind continued up to a short time before the Board changed its offices, and a short time before that time. Mr. J. Edward Addicks was a caller on Mr. Record at that time, and was seeking desk room in New Jersey, and he spoke to me about it, and I told him he would have to speak to Mr. Record as he held the lease.

BY SENATOR MINTURN.

Q. You mean the Delaware man? A. Yes, sir; and I heard Mr. Record say to Mr. Addicks, "I rent a room to the Riparian Commission and the rest of the damned outfit is mine." So I can't say in answer to your question how much of that was pretence or vanity. I know Mr. Record usually referred to the outfit as his, and everything about it as his, but I regarded that as perhaps a little pardonable vanity.

Q. What did you understand by the word "outfit" in that connection.? A. I understood the rooms.

Q. Not the Commission? A. Not the Commission.

BY THE ATTORNEY-GENERAL.

Q. At the time of this statement to the would-be senator from Delaware, that he rented a room, to the Riparian Commission, in fact what part of the rent was the Commission paying? A. The Commission was paying $65.00, and Mr. Record was paying $35.00; and the Commission was paying $35.00 per month towards the stenographer's compensation, and Mr. Record was paying $25.00.

BY SENATOR WAKELEE.

Q. While you are referring to the outfit, I want to ask you about the furniture; who owned the furniture? A. The State owned nearly all of the furniture, except two or three wornout desks, one of which belonged to Mr. Bacot, and one of which belonged to Mr. Record; and another fairly good desk which belonged to Mr. Record, and some small pieces of furniture; the rest of the furniture was bought and paid for by the State.

Q. What became of that furniture after the division of assets in the outfit took place? A. The Riparian Commission succeeded in carrying away of the part that belonged to it, all but a carpet and a set of bookcases, book shelves costing about $150.00, which Mr. Record refused to allow the Commission to take out, and the committee to whom it was referred didn't press the matter and it dropped there. Mr. Record now has in his possession that furniture that belongs to the state.

Q. And is not in any room for which the rent is paid by the state; not in a state office? A. No, sir.

Q. How about the telephone in that office during all this time that there was a joint combination? A. The Riparian Commission paid half of the telephone rent, which was, perhaps, a fair division, as the use of the telephone by the Commission was very limited, and the outside tolls are very few, and Mr. Record paid those outside tolls.

BY THE ATTORNEY-GENERAL.

Q. Do I understand from the testimony just given, that at the time the Riparian Commission moved from the upper to the fourth floor of the building in which we are now sitting, that a part of the furniture which had been supplied by the state remained in his possession and is still there? A. Yes, sir.

Q. I wish you would explain that. A. The circumstances of that were a little peculiar. When the present Commission came into office, they, without exception I think, desired that the offices of the Commission and Mr. Record should be separate, and I was directed to notify Mr. Record that the Commission desired to make some such arrangement. I did so, and found Mr. Record very

much opposed to any change being made, and I so reported to the Commission. The Commission looking into the matter a litter further, found that Mr. Record's lease ran for some time, perhaps a year, and it was their judgment that it was fair, as the old Commission had made an arrangement with Mr. Record to occupy those rooms, under those conditions, that they should continue to do so to perhaps the end of that time, and that course was followed out. The offices now are separate from Mr. Record's.

Q. How did it happen that the furniture referred to was still permitted to remain with him ; it was good furniture, was it not ? A. It was good furniture. The situation there was, that when the Commission decided to move, some question arose as to the ownership of the furniture, and Mr. Record rather impressed the Board, I think, that he had some rights in the furniture, and my part was simply the exhibition of the vouchers in the case ; I had no further interest than that ; and the matter was referred to a committee consisting of Mr. Cloke and Mr. McLaughlin to adjust the matter. The committee held a meeting and Mr. Record made a statement, a sort of a general statement that it was a kind of a partnership arrangement, something of that kind ; but I simply exhibited to the committee the vouchers, which showed the payment by the State for the furniture, and Mr. Record demurred to that, and said that his books showed that he had paid me $95.00 and $72.50 on the furniture account at the time the rooms were furnished. I knew that was untrue, and Mr. Record had his check book in his lap while he was making that statement, and I asked him why he didn't show the check book to the members of the committee ; as I remember, his answer was that that was his business. The committee went on, passed that question, and finally Mr. Record made the suggestion that the carpets be allowed to remain on the floor and the book cases be allowed to remain in the office, and that he would relinquish the ownership of a filing case. The carpet and book cases cost $150.00 and the filing case $46.00. The Commission agreed to take my opinion—I was ready to agree to anything, the book-cases were never bought for the Commission, they were bought for Mr. Record and had always been used by him, and that conclusion was reached. Then the question of the rent came up, and the Commission had been paying $65.00 per month for the rooms, and I had gotten from Messrs. Potts and Higgins, whose rooms we took—I got from them simply for my own information as to what the lease contained, and not for any other purpose, the lease, which they gave me very freely, and I saw that the rent of that suite of rooms was $50.00 per month.

Q. That is where you are now? A. Yes, sir; and the discussion of the committee went on, passed the furniture matter, and I said, so that there might be no misunderstanding, "Then it is understood"—because there was some question that some other persons had some rights in those rooms down stairs, and might have access to the rooms, which I didn't want, for the Commission; I wanted them to have the absolute use of the rooms. I said, "It is understood that the Riparian Commission are to have the absolute use of that suite of rooms that Potts and Higgins now have on the fourth floor", and Mr. Record said, "Yes." I said, "Well, that is advantageous, because the rent of that suite is only $50.00 per month." Mr. Record says, "I don't understand it that way." I said, "It is not a matter of understanding, it is a matter of the lease," and I drew the lease from my pocket, which I hadn't obtained for that purpose at all—not anticipating that there would be any question of the rent—and I showed the members of the committee that lease, which said the rent was $600.00 per year, and they were very much surprised at Mr. Record's attitude, and asked for an explanation, and he said he had none to give; he said he was getting $65.00 a month for those rooms, and he was going to get $65.00 for the rooms downstairs. I remember Mr. Cloke asking him to whom the $15.00 should be paid, and he didn't reply, and Commissioner McLaughlin said, "It looks to me very much like an unfair proceeding," and both members of the committee decided they would not accede to the proposition, but directed me to find rooms elsewhere. I knew how difficult it would be to find suitable rooms, indeed, impossible in this building, and so I asked the committee as a favor to me, as I had realized all along how detrimental to my work it was to attempt to carry on the work under the conditions, and I asked them to take the proposition, but allow me to assume the additional rent, and the Commission pay $50.00, which they reluctantly did, and that was done, and that is the arrangement now. Mr. Record asked one of the Commissioners to see that the additional $15.00 was paid to Potts and Higgins, for some reason, and I have paid it, and the Commissioners have paid $50.00 by their own check. I acceded to that request; I had no wish to embarrass Mr. Record, my only wish was to carry out the purposes of the Commission, and the Commissioners draw one check for $50.00, and I draw my personal check for $15.00, to the order of Potts and Higgins, but to my surprise, when it came back to my bank, it had been endorsed by Potts and Higgins, and then endorsed by Mr. Record for deposit to his account. That is the situation at the present time.

BY THE ATTORNEY-GENERAL.

Q. When did the Commission move to the fourth floor of this building? A. February of this year.

Q. That is how long after Mr. Record ceased being counsel of the Riparian Commission? A. I have forgotten the date; 1903, I think, to 1906.

BY SENATOR MINTURN.

Q. Were Potts and Higgins in any way connected with these offices; how did they come into it? A. Judge Higgins, as I know from observation and from repute, and as everybody knows, is a close, political and personal friend of Mr. Record. In their Jersey City affairs they were very close, and Judge Higgins spent a great deal of time up in Mr. Record's rooms, and a great many conferences, political conferences, were held there; and Judge Potts is also a member of the same wing of the party and they were closely associated, and in that way—I am sure Mr. Cloke can tell you more about that than I can—Mr. Record became very much displeased with the way the office was carried on with regard to his matters, and it was then that he sought this arrangement with Potts and Higgins, by which Judge Potts took the room that the Riparian Commissioners had; Judge Higgins took the second room, and Mr. Record retained his own room and simply transferred their offices to Mr. Record's.

Q. Merely exchanged offices? A. Yes, sir.

BY MR. BARBER.

Q. This lease of $50.00 per month, was that to the Riparian Commission? A. No, it was to Potts and Higgins.

BY THE ATTORNEY-GENERAL.

Q. So, if I understand, the old suite was on what floor? A. The seventh floor.

Q. That was jointly occupied under the arrangement we have been speaking of, by the Commission and Mr. Record? A. Yes, sir.

Q. But the lease was to Mr. Record? A. Yes, sir.

Q. And it had how long to run? A. I think a year still.

Q. From last February? A. I think so, I am not sure about that.

Q. When you came to separate finally your rooms, which, as I understand, was quite as agreeable to Mr. Record as it was to you—A. Yes, sir, at that time.

Q. You were able to get a lease for the Riparian Commission of the rooms you at present occupy at the rate of $50.00 per month? A. I thought we were getting that.

Q. You would have if it hadn't been for some claim or $15.00?

A. Yes, sir; the existing lease is $50.00, and we took over that ease.

Q. And in order to effectuate the separation you arranged to pay pesonally, yourself, $15.00 to Potts and Higgins, and then to Mr. Record? A. Yes, sir.

Q. And that is still in operation? A. Yes, sir.

BY SENATOR WAKELEE.

Q. How long is that expected to continue? A. I think it can't continue longer than perhaps Potts and Higgins' lease, although I am not sure, because they have the lease and perhaps the right of renewal, so that they might renew it, and with that I should feel under obligations to continue the arrangement we have.

BY THE ATTORNEY-GENERAL.

Q. I now take up the remaining lands under water belonging to the state in the Hudson river, and will refer first to the Schaumberg grant; how large is that Schaumberg tract? A. The Schaumberg tract is the largest and most important tract of land still belonging to the state on the Hudson river. It is about 1,600 feet in width, but is divided, however, pretty nearly in two by a former lease of 50 feet, the status of which I don't know; but there is a lease of fully 50 feet which divides it into two tracts of 800 feet. Those two tracts I consider the most valuable of any water front we have on the river.

Q. Where are they located? A. At what is known as Bull's Ferry, that is the first place of note in history south of Fort Lee; it is an old landing place.

Q. About what distance between high water mark and the solid filling line? A. About 900 feet.

Q. Give the acreage in the two tracts? A. About 16 acres.

BY SENATOR MINTURN.

Q. It is located in Edgewater? A. No, I think it is south of Edgewater.

BY SENATOR WAKELEE.

Q. Just over the line in Hudson county? A. Yes; part in Hudson and part in Bergen; the county line comes down back of the river and along the old road, back of the swamp, then strikes Hudson county right at the dock, right at the lease.

BY THE ATTORNEY-GENERAL.

Q. Did you know of Mr. Dunham in connection with the upland of the Schaumberg tract? A. Yes, sir; he was a frequent caller and I did some work in connection with that—some letter writing, and gave some little opinion. He was a client of Mr. Record.

Q. Did he have any interest as you understood it, in this so-

called Schaumberg tract? A. I understood he owned it, although it was involved—the matter was so frequently referred to—Mr. Bacot was associated with Mr. Record, and Mr. Bacot's relations and mine were very intimate and friendly, and I practically knew about what was going on.

Q. Then, Mr. Dunham either owned in whole or part this Schaumberg shore front? A. Yes, sir.

Q. And you say Mr. Record was his attorney? A. Yes, sir.

BY SENATOR MINTURN.

Q. Mr. Record was Dunham's attorney? A. Yes, sir.

BY THE ATTORNEY-GENERAL.

Q. When, if at all, was the application for the grant made for this Schaumberg property to the Board, first? A. An application appears in the papers on file in the office of the Commission of Alexander J. Schaumberg, October 15, 1903.

Q. Who was the counsel of the Board at that time? A. Mr. Record.

Q. Who appears as attorney for the applicant? A. James A. C Johnson.

Q. Did you thereby become acquainted with Mr. Johnson? A. Yes, sir.

Q. Previous to the appearance by Mr. Johnson before the Board in this application, had you had any conversation with Mr. Record concering the matter, and if so, what? A. The question of the acquisition of the riparian rights of this property had been an important part of the negotiation. I am sure of that, because they had often been referred to—what the riparian rights would cost. Mr. Johnson had frequently appealed to me, I gathered, for an idea as to what could be done in acquiring the riparian rights, and I had—having in mind that that was a very valuable piece of property of the state—always told him that I thought it would cost two or three hundred thousand dollars to acquire it.

Q. Did you have any communication, in writing, with Mr. Johnson about it? A. Yes, as early as November—a year before this time—I wrote a letter to Mr. Johnson.

Q. How did you happen to do that? A. At Mr. Record's request Mr. Record was negotiating all this time for the sale of this property.

Q. You mean the sale of the upland? A. Yes, sir; and the question of the availability or desirability of the land under water was brought up and Mr. Record desired, I imagine, to assure the prospective buyer that it was a good piece of property, and I had been associated with the Commission for about twenty-five years then,

and had made a great many surveys and examinations, and he asked me to write a letter to Mr. Johnson giving him my view of the riparian right.

Q. Is this a copy of the letter you wrote? A. I have a copy of the letter I wrote.

Q. Did Mr. Record ever see that letter? A. Yes, I showed it to Mr. Record for his approval and inspection, although it had nothing in it that I could change if it had not suited him. It was a letter which told the truth about the lands under water, as I had ascertained them by inspection.

Q. At that time no application was pending for the grant? A. No.

Q. This was a year ahead of time? A. Yes, sir.

Q. Let me see the letter. A. (Witness produced the letter.)

The letter was then offered in evidence and read to the Committee, and is as follows:

November 20th, 1902.

J. A. C. Johnson, Esq.,
49 Wall street,
N. Y. City.

Dear Sir:

I am requested by Mr. Record to send you my opinion of the character of the bottom in front of the Bulls Ferry Property on the Hudson river.

I have known for twenty years, as engineer of the Riparian Commission of the State of New Jersey, having charge of the sale of the water front of the State of New Jersey for commercial uses, of the improvements made on this part of the river front. I have known of and seen the improvements made by different corporations occupying the water front in that locality, and have personally made soundings at the different points, in order to ascertain the character of the bottom of the land under water.

From my knowledge and examination, I am satisfied there is no difficulity in securing such foundation for crib work as is necessary to hold the filling deposited behind it, in order to bring the land up to a height suitable for commercial uses, and there is no difficulty in securing such a footing for piling out to the pierhead line, as will sustain any structure that will be needed to be built in connection with the property.

In the practice of my profession, and my connection with the Riparian Commission, I have laid out several of the dock properties

which are now improved, and have known of the improvements as they were made, and these improvements are now in existence and demonstrate the truth of what I have stated—that there is no difficulty in filling in and building piers.

I was familiar with the improvements made by the Erie railroad. I made surveys in connection with the improvements made by the West Shore Railroad Company at Weehawken, before the improvement was started. I located the lines for the docks of the Wilcox Lard Refining Company. I made the surveys for the Metropolitan Gas Light Company, and surveys and soundings of the property now occupied by the New York, Susquehanna & Western R. R. Co., as well as the improvement made by Ross & Sanford at Coytesville. These fillings and docks are now in existence and demonstrate the feasibility of making improvements along this water front. All of the above concerns have, for many years, maintained piers built upon the property along this shore, and have conducted the ordinary business incident to freight terminals of railroad companies and large manufacturing industries.

As to the rock in this bottom, it is entirely safe to say that the rock shelves off very rapidly from the shore out into the river. Probably, near the shore, you would strike rock at a distance of twenty to thirty feet; at a distance of one hundred feet from the shore you would probably strike rock at about fifty feet; and from the one hundred foot line out to the exterior line, the rock would certainly not be any nearer the surface than this, and probably would be found at a still greater depth.

Yours very truly,

(Signed) JOHN C. PAYNE.

Q. That letter was written November 20, 1902, and October 15, 1903, came the application over Mr. Johnson's signature, as I understand it? A. Yes, sir.

Q. I want to direct your attention to one conversation you had with Mr. Johnson in which, after the presentation of that application or before, I don't know which, you were discussing the probable price the Commission would ask for the lane; do you recall what I refer to? A. Mr. Johnson had, on more than one occasion, I might say almost on a half a dozen occasions, in the time he was coming in and out of the office to see Mr. Record, touched upon the subject of what they could get the riparian rights for, and I had invariably declined to express any other idea than that they would have to present the matter to the Commission, but that my personal ideas were that it was very valuable.

Q. Did Mr. Record at this time appear and make any remarks? A. While this application was pending Mr. Record came to me and said that he had written a letter to Mr. Johnson advising him to get Colonel Fuller to represent the applicant before the Riparian Commission. He said, "I haven't any damned conscientious scrup ples about it, but I am interested in the sale of the property and can't appear; you can make what you can out of it, but I can't appear in the matter." Shortly after that time Colonel Fuller came to me, as is customary and usual for people seeking information, and asked what prices the Commission were charging and what I thought they would charge. I told him what price they were charging, and I told him what I thought they would charge.

Q. What was that? A. I thought they would charge two or three thousand dollars for it, but that from my knowledge of the situation, and without any knowledge at all of Mr. Schaumberg, whom I hadn't met at that time and didn't know, I had the impression that the applicants did not really intend to take a grant, that they simply wanted to commit the Commission to as low a price as possible, to effect some transfer, or some negotiations, and I so told Colonel Fuller. I said as a friend, as I would say to anybody, "I think you had better see that your arrangements for compensation for your legal services are attended to, because I don't believe these people are going to take a grant. I think it is simply that they desire to have the Board state what price they will make, to be used in that way." That is the last thing that occurred in the matter until July, 1905. Mr. William H. Corbin appeared as attorney for Mr. Schaumberg and renewed the application, filed an amended application, and Mr. Corbin had practically the same conversation with me, which simply was because I am the officer in charge of the office, and asked what prices the Board were charging. By this time the new Commission had come in, and their idea of prices had advanced materially, and I told him what I thought their ideas were; that I didn't believe they would make a grant of that front for less then $150.00 to $200.00 per foot, and I said to Mr. Schaumberg that I thought he made a mistake in not carrying through his negotiations at the time of the original application, because there was a new Commission and the prices had changed.

Q. What did he reply? A. Mr. Schaumberg, as I recollect, seemed to feel that he hadn't been fairly treated, perhaps, that Mr. Record had either promised, or he had understood from Mr. Record, that he could get the Riparian rights for a certain figure.

Q. When did Schaumberg acquire his interest, if you know, in the upland? A. I don't know. Mr. Schaumberg is here.

Q. I expect to call him. Did he say anything at that time as to what inducements had led him to become interested in that land? A. I think I recall that Mr. Schaumberg—I didn't know until then what his business was—he was a large cattle importer, and I think he wanted that for that purpose, that was to establish a large depot for the exportation of cattle.

Q. Did he state that any inducement had been made to him to purchase the property and acquire the riparian rights? A. It is quite clear that he said that Mr. Record had promised, or given him to understand that he would get the riparian rights at a reasonable figure, my figure; my impression is of $50.00 per foot.

Q. Did you understand that Schaumberg purchased from Dunham? A. I don't know what the title was. I know that Mr. Dunham brought the matter into the office, and I don't know what the chain of title was or what the complications were.

Q. The Schaumberg grant has not, in fact, yet been made? A. No, sir.

Q. That is still one of the properties owned? A. Yes, sir.

Q. What other tracts are there on the Hudson river outside of that tract? A. The two other tracts I referred to are two tracts in front of the King property at Weehawken. The application for those two tracts is pending. The Board fixed a rate of $200.00 per front foot, and while the applicant has not declined, and does not say that the price is too high, he asks time within which to carry on some negotiations for the sale of the property of which these two tracts are part. The King front is a front of about 1,500 feet, and these two tracts are separate tracts, and negotiations are being carried on to gather them all into one tract.

BY SENATOR MINTURN.

Q. All that property in front of the King place is held under lease? A. No, sir; there are about three or four tracts that were granted under a lease, either lease or grant, and there were originally seven tracts; the King water front was divided into seven tracts of about 150 feet each, and of those two are still held under a lease from the state, a lease made in 1882. Three of the tracts are held under a grant in fee, originally a lease but converted into a grant in fee, and the remaining two are still property of the state, and the subject of the applications that I have referred to, and on which the Board have fixed a price of $200.00 a foot front.

Q. I want to turn now, Mr. Payne, to the Navesink railroad application, to which reference was made the other day. Will you produce the files in connection with that grant? A. I have them with me.

Q. What fee did the State get for that matter? A. I haven't that record; the record book of the fees is down stairs.

Q. You don't recall now? A. No.

Q. I think it was $40.00? A. No; it was a considerable sum the State realized for that water front,

Q. Will you produce the application? A. Yes; I have the various applications. There was an application and an amended application.

Q. Let me see them. Can you give any reason for so many applications and amended applications as there appear to be here? A. Yes; the reason of that is the railroad company changed its location somewhat. The matter was somewhat hurried and the applications were put in, and then there were changes made in the location of the road and the applcations were changed to fit those changes.

Q. I notice that Leon Abbett, Jr., appears in these applications and amended applications, as attorney for the Navesink Railroad Company; did he ever appear before the Board in regard to the matter? A. I don't remember Mr. Abbett ever appearing in connection with the matter.

Q. Are you familiar with the handwriting in the manuscript in the application that I show you? A. The application is backed in the handwriting of Mr. Record and the body of the application is filled out in my handwriting.

Q. Take the others; that is, the first one. A. The second one is backed in the handwriting of Mr. Record, and is in typewriting.

Q. Do you know whether that is the genuine signature of Mr. Abbett? A. I do not. The third is backed in the handwriting of Mr. Record, and is in typewriting.

BY SENATOR WAKELEE.

Q. Do you know where these typewritten ones were prepared? A. They were prepared, I think, in our office.

BY THE ATTORNEY-GENERAL.

Q. The office of the Commission? A. Yes, sir. Mr. Record seems to have had entire charge of the matter and I drew these maps under his direction, and I think I am correct in saying that he had entire charge of the matter.

Q. Now, at that time, he was one of the counsel of the Board? A. Yes, sir.

SENATOR WAKELEE.—He was the counsel.

THE ATTORNEY-GENERAL.—No; this was before the appointment of the general counsel.

A. He was the counsel for Bergen and Hudson counties.

Q. Had the Board, prior to this time, if you know, ever granted

any such license as was here applied for and subsequently granted to a railroad company? A. No, sir.

Q. Do I understand you to say that you never remember Mr. Abbett appearing in the matter at all? A. Yes, sir; I never remember him appearing.

BY SENATOR MINTURN.

Q. Who was Governor then? A. In 1891?

THE ATTORNEY-GENERAL.—You will have to ask some of the reporters.

(One of the reporters stated that Leon Abbett was Governor in 1891 and 1892.)

Q. Do you know whether notices were sent to the owners of the upland in this case? A. There is a file of the papers, and I believe a notice, of which there is a copy on file, was sent to the parties named on the outside of the papers, informing them that the Com. mission would consider the application on Friday, December 11th, at nine o'clock a. m.

Q. That is the nine o'clock case? A. Yes, sir.

Q. What was the reason for fixing that at such an early hour? A I have no recollection, Senator?

BY SENATOR WAKELEE.

Q. Did you ever know of any other hearing being set by the Riparian Board for that early hour? A. No; the Atlantic Ocean Railroad was set for 12 o'clock.

THE ATTORNEY-GENERAL.—I will ask you to withdraw for a moment to get the records in this case so that we may know what we have, and in the meantime, I will call Colonel Fuller.

CHARLES W. FULLER sworn. Examined by the Attorney-General.

Q. You are a lawyer in this city and have practiced here for a long time? A. Yes, sir.

Q. Do you remember being waited upon some time ago by Mr. James A. C. Johnson, a lawyer living at Englewood, or somewhere in Bergen County, and being requested by him to co-operate with him in securing a grant for some land under water on the Hudson River, in which Mr. Johnson was then acting? A. Yes.

Q. At whose suggestion did Mr. Johnson tell you that he enlisted your co-operation? A. In the beginning he didn't tell me anybody; after we had two or three interviews, he said he had been sent to me by Mr. Record.

Q. When was that? A. I could not tell you that, I didn't make any memorandum.

Q. Was this the tract that has been spoken of in this proceeding as the Schaumberg tract? A. Yes, sir; that it the name of the owner. I saw Mr. Schaumberg—a gentleman who was introduced to me as Mr. Schaumberg.

Q. Where was this property? A. Up on the Hudson river near Fort Lee. I never saw it.

Q. After you had been interviewed by Mr. Johnson, what steps did you take in the matter and what did you do? A. I went down to the Riparian Commission's office and examined the map and had a conversation with Mr. Payne as to the value of the property, and then afterwards had an interview—Mr. Johnson came to my office several times about it, and I advised him they would get no reduction of the price already put upon it by the Commission, and if they didn't want the property to withdraw the application.

BY SENATOR MINTURN.

Q. Why didn't Mr. Johnson appear himself before the Commission? A. That I don't know.

Q. Was he an attorney and counsellor of this state? A. That I don't know; he lives at Englewood.

SENATOR WAKELEE.—My impression is that he is not. I think he is a New York lawyer.

Q. He gave you no reason for asking you to appear in the matter? A. At the first interview he asked me if I had much business with the Riparian Commission, and I said I had a great deal of business with the Riparian Commission, but for no property on the Hudson river; that I was more familiar with the properties in Bayonne than with any others, and I had a good deal of business with the Commission, and he told me that the Riparian Commission had put upon this property what he regarded as a very high price, and I replied that he ought not to go for a doctor when he needed an undertaker; that probably if they had fixed the price, it would be very hard to move them, but I would see what could be done; and I saw Mr. Payne and he stated what occurred at that interview, and I had two or three interviews with him, and on the second or third interview he told me he had been sent to me by Mr. Record. Mr. Record never said a word to me about it.

BY THE ATTORNEY-GENERAL.

Q. Did he give any reason at the time he told you he had been sent to you by Mr. Record, for having sent him to you? A. No.

JOHN C. PAYNE, resumed. Examined by Senator Minturn.

Q. Who constituted the Commission at this time that Colonel Fuller has referred to? A. In 1891?

Q. No, in 1903? A. The Commissioners were Willard C. Fisk, John J. Farrell, John I. Holt and William Cloke.

BY THE ATTORNEY-GENERAL.

Q. You have stated, as I understand it, that this license to the Navesink Railroad company of a right to construct a railroad on the state's land purported to be done pursuant to Section 36, I think it is, of the old railroad law, was the first one that had ever been granted. Before that was granted, was any reference made to the then Attorney-General for an opinion as to the power of the Board to grant the application? A. None appears in the records of the case, and although there is in the minutes a request that the Secretary of the Board ask the Attorney-General and Governor to be present, there is no record that they were present, and there is no record that there was any opinion or anything of the kind.

Q. Have you a copy of the license with you? A. No, sir; I can get it; it is down stairs.

Q. It is not signed by the Governor? A. The license?

Q. Yes. A. It is signed by the Commission and the Governor, under the state's seal, in regular form.

Q. Did you ever hear, personally, prior to that time, of the making of such a peculiar paper as that license was, to a railroad company by the Riparian Commission? A. I had never heard of it, and I know as a fact that it caused some amusing comment that such a location should be called a crossing.

BY SENATOR MINTURN.

Q. Was the Governor's opinion sought on that question? A. No, sir.

Q. Won't you describe to the Committee where this grant and application commenced, how far it traversed, and where it ended? A. The main tract comprised in this license, commenced at the Atlantic Highland dock, which is now the landing place for the Sandy Hook steamers of the Central Railroad Company, and extended east about 3,000 feet along the shore to the lands of the Navesink Park Company, and was a strip about 15 feet in width, extending from the high water line outwardly or northwardly to the northerly right of way line of this new railroad. Another application and license at that time was across the Shrewsbury river, at the Highlands; that was a direct crossing from one side of the river to the other.

THE ATTORNEY-GENERAL.—The Committee have heard the

description of the property, license to build upon which was applied for and granted, and will be interested, I think, in hearing the section of the law read which was supposed to authorize it:

"That it shall be lawful for any company incorporated under this act, in addition to the powers hereinbefore given, to build viaducts over any navigable or other rivers, streams or bay of water which such railroad may cross, putting in such viaduct a pivot-draw with two openings, each of no less width than the widest opening of any viaduct or bridge now built over any such river, stream or bay of water, at right angles to the main channel, located at a point convenient for navigation; and such company shall, at all times, when such river, stream or bay is navigable, for the safety of persons navigating the same, cause to be kept a red light at each outer side of said draws, and a white light at each inner side of said draws, which shall be lighted every evening, at or before sunset, and be kept lighted until daylight; and shall also keep, or cause to be kept, a suitable person or suitable persons at each of said bridges, to open the draws for the free passage of all vessels with standing masts or pipes; and for each and every neglect to keep such light and to open the draws when necessary, the said company shall forfeit and pay the sum of one hundred dollars, to be recovered with costs, in any court having jurisdiction thereof, by any persons who shall sue for the same, within six months after the time of such neglect; provided, that corporations formed under this act shall not take any land under water belonging to this state until the consent of the Riparian Commissioners shall first be had and obtained (unless the said land is at least twenty-five feet under the bed of the water), who are hereby authorized to convey the same on receiving such compensation as they may fix; provided further, that no corporation organized under this act shall be authorized to take, use or occupy, by condemnation, any lands belonging to the state of New Jersey, or any franchise, lands or located route of any bridge, railroad, canal, turnpike, or other corporation chartered for the purpose of facilitating transportation, except for the purpose of crossing said lands or route of said corporation, and except the lands of such other corporations not necessary for the purpose of their franchises."

SENATOR MINTURN.—Is that in the present revision of the railroad act?

THE ATTORNEY-GENERAL.—Practically so, and you will find in a recent case, in the 62nd Atlantic Reporter, in the Schaumberg

case, Judge Fort holds that that present law being practically a re-enactment of the old law, has no application whatever to a longitudinal grant along the upland, but only refers to a bridge over a, stream.

SENATOR WAKELEE.—Is that the section that is claimed as authority for all these three licenses that have been granted?

THE ATTORNEY-GENERAL.—Yes; I am coming to another one now.

BY THE ATTORNEY-GENERAL.

Q. Was any application ever made to your Board by the Atlantic Ocean Railroad Company for permission to construct a road along the State's land? A. Yes, sir; an application was made by the Atlantic Ocean Railroad Company in 1893, February 9.

Q. The application of the Navesink Company was at what time please? A. 1891.

Q. So that about two years after that had been granted, under the circumstances named, another application was made and presented by the Atlantic Ocean Railroad Company, was it? Have you got the petition? A. Yes, sir.

Q. The petition is presented; it states that it is a railroad organized under the general railroad law, that it desires to cross with its railroad certain lands in the Atlantic ocean, belonging to the State of New Jersey, describing them, and asking permission to cross them. Who represented this company, if you know? A. Judge Joseph Thompson, of Atlantic City.

Q. What was done in reference to that application? A. It was referred to the Attorney-General and to the counsel of the Board—it was referred to the counsel of the Board.

Q. For what? A. For his opinion.

Q. As to the propriety of making a grant of that kind? A. As to the legal propriety of making a grant of that kind.

Q. Have you that opinion? A. Yes, sir; I have the opinion, concurred in by John P. Stockton, the Attorney-General.

Q. So that when the Atlantic Ocean Railway Company applied for its grant, the counsel of the Board was asked to give an opinion as to the right to do it, and he took the trouble to get Attorney-General Stockton to concur in the subject? A. Yes, sir.

Q. Now, I understand that two applications were made for exactly the same thing, except one was for the right to lay a railroad across land under a river, and the other for lands under the ocean? A. Yes, sir.

Q. I will read from a portion of this opinion signed by Mr. Record and concurred in by the Hon. John P. Stockton:

"It will be observed that the application is made under the 36th section of the general railroad act, which provides 'That it shall be lawful for any company incorporated under this act, in addition to the power hereinbefore given, to build viaducts over any navigable or other rivers, streams or bays of water which said railroad may cross, putting in such viaduct a pivot-draw with two openings, each of no less width than the widest opening of any viaduct or bridge now built over any such river, stream or bay of water at right angles to the main channel, located at a point convenient for navigation.'

It is obvious that there is no power given to the Riparian Commission by this section to grant the right to parties to locate and construct a railroad along the whole front of a city passing in front of riparian proprietors against their will and convey the land for the same. The provision of the statute is confined entirely to crossing the land of the state and provides minutely for draws, lights and other means to facilitate and protect navigation.

The application is not simply for a license to use the land of the state, but it also seeks a conveyance of the land. This power, also given in the section, is confined to rivers, streams and bays ; that is, it is confined to land within the boundaries of the State of New Jersey, and where the state owns from shore to shore, and manifestly has no reference to grants along the ocean front. The subsequent proviso which authorizes the Commission to convey, is, by the ordinary rules of construction simply a limitation applicable to the power before given to build viaducts over any navigable or other rivers, streams or bays of water which the railroad may cross.

Under these circumstances, I am of opinion that it is foreign to the purpose for which the Riparian Commission was created, to make such a grant in opposition to the wishes of the riparian owners, and beyond the powers given to them by that portion of the act to which applicants appeal, and that it would be highly inexpedient and dangerous for the Commission to assume such power in such a case as the present one. This application is made for the benefit of private parties, who desire to use these lands for their own private emolument, quite as much as for the alleged public benefit, and it is quite doubtful whether the public good will be consulted by such a grant. It is not, therefore, a case in which the Commissioners should resort to the exercise of powers, which, to say the least, are extremely doubtful.

The question has been made as to whether the Commission has a right to convey land on the Atlantic ocean.

The rule is well settled, that inside of headlands, and arms, and

bays, and navigable streams, the state is the owner of the soil, under the water, to the middle of the boundary stream, and to the whole bed of the river or bay, when it is entirely within the limits of the state; but on the Atlantic ocean the limits of the state property is low water mark.

What is called the three-mile belt, which is the right that a nation has to exercise control as to foreign powers of three miles from the shore for its own protection, would seem to be in this country in the national government; but even if it should be held to exist in the state, that is not a property right of the land under water which would enable the state to convey it away, so that the limit of the land which could be conveyed by the state would be low water mark. I do not mean to say that the state has not the power to give permission to one who buys the right to low watermark to extend wharves and piers in the ocean, and thereby reclaim from the sea, land which when reclaimed, would be above low watermark and under the jurisdiction and subject to the laws of the state permitting such accretion to be made."

Q. Subsequent to the opinion thus quoted from what became of the application? A. It was refused by the Commission.

Q. When the application of the Edgewater Railroad Company was made, which we spoke of at the last hearing, was that for a license for several miles in length? A. Three miles in length.

Q. That was when, after this opinion in the Atlantic Ocean Railroad case? A. Yes, sir; long after.

Q. That was granted? A. That was granted; yes, sir.

Q. What became of the legal views contained in that opinion on that grant? A. I remember distinctly Commissioner Cloke asking whether the land owners had been notified, and I said they had not, and he asked whether it was not necessary, and I referred him to Mr. Record, and Mr. Record said it was not necessary to notify them, and the license was executed without any such notice.

BY SENATOR MINTURN.

Q. Did he give any reason for that? A. No, sir. The same course was followed in the New Jersey Shore Line Railroad license a short time after, and that is the license that was set aside by the Court, referred to by the Attorney-General, because of the failure, and other reasons, to notify the shore owners.

Q. In the case where the shore owners were directed to appear at nine o'clock, here in Jersey City, was there any appearance entered after that? A. No.

Q. Or protest made? A. No; no appearance is noted and no

further attention is paid in the minutes to the question, but the licenses were executed.

Q. Was there any protest of any kind offered by any shore owners? A. None appears.

Q. Either at the time or after the grant? A. None appears in tho papers in the case.

BY SENATOR WAKELEE.

Q. Who presented these applications in the last two cases? A. In the Edgewater and Fort Lee Railroad case the application was presented by Mr. R. O. Babbitt, who was the attorney in the Goetschius' matter; in the New Jersey Shore Line Railroad Company I think it was presented by Mr. Frank H. Earl, attorney; I am not quite positive; I think that is so.

BY SENATOR MINTURN.

Q. He was not a lawyer? A. No; the applications are not always presented by a lawyer, they are presented by the applicant, or by an agent.

THE ATTORNEY-GENERAL.

Q. As I understood it, in the Shore Line railroad, and in the Edgewater railroad, they were both presented and granted after the opinion in the Atlantic Ocean railroad. Was Mr. Record, the counsel of the Board, aware of the applications being made and grants to the Edgewater and Shore Line railroad companies? A. Yes, he was the general counsel of the Board.

Q. Did he have actual knowledge? A. He was consulted. Mr. Cloke asked him whether it was not necessary to notify the shore owners in the case of the Edgewater and Fort Lee railroad.

BY SENATOR WAKELEE.

Q. Was anything said about this former opinion and action in the Atlantic Ocean case? A. No, sir.

BY THE ATTORNEY-GENERAL.

Q. Another question suggested by the Senator, in either case, to wit, the New Jersey Shore Line and the Edgewater, as to the right of the state to make a license in view of the opinion of Attorney-General Stockton and Mr. Record in the Atlantic Ocean railroad case, were the shore owners notified? A. As I remember, Mr. Record's reply was to Mr. Cloke's inquiry, that it was not necessary under the general railroad law to notify the shore owners; it was mandatory on the Commission to make the grant under that law.

Q. What consideration did the state get for the New Jersey Shore Line and the Edgewater licenses? A. The New Jersey Shore Line paid $400, and the Edgewater and Fort Lee place $1,500.

Q. The New Jersey Shore Line was about how long? A. About 1,600 feet, perhaps 800, seven or eight hundred feet. It takes in part of Mr. Schaumberg's property.

Q. And the Edgewater, you also stated was what? A. Three miles.

BY SENATOR WAKELEE.

Q. Was Mr. Schaumberg's application pending when this license was granted? A. Yes, I think it was. Mr. Schaumberg's application is dated October 15, 1903, and the New Jersey Shore Line license was granted March 31st, 1904.

BY THE ATTORNEY-GENERAL.

Q. I have just one more subject to revert to today before suggesting an adjournment, and that is to complete a matter that was started by one of the members of the Committee in regard to the settlement that was made upon the furniture account, at the time of the severance of the joint arrangement between the Commission and the former counsel of the Board. Mr. Payne, I haven't quite understood what was, in fact, done toward settling the furniture account between Mr. Record and the Board at the time of the removal downstairs. I understood you to say, on the one hand, that some furniture was left there, and is still used, as far as you know by Mr. Record, for which the state has never received any compensation; is that right? A. Yes, sir; that is true.

Q. I understood you also to say that there was some claim made by Mr. Record that he had paid you $95.00, which you demonstrated to him was a mistake. Will you please explain more fully? A. When the Commission moved from the Fuller building, where the same joint arrangement was carried on, to this building, the state appropriated $500.00 to furnish the Riparian Commission's offices. Mr. Record took a very active interest in that operation, and went over with me and largely selected the furniture; his tastes were better and more expensive than mine, and I deferred to them, particularly as nearly all of the new furniture was to go into the room that he occupied exclusively, with the exception of when the Commission met. All of the expenses of moving I paid, and then charged Mr. Record what he should pay, and there was a filing case, and new furniture; that cost $46.00, and his proportion of the moving was $5.00, and the repairing of furniture $10.00, and moving the safe $8.00, and lettering the door $3.50. These were pretty liberal or advantageous allowances to Mr. Record, because we had the money, and it amounted to $72.50, the amount that Mr. Record was to pay me. When we came to a settlement, Mr. Record drew a check for $95.00 to my order, and

that was $22.50 more than it should have been, because $72.50 was all that I had asked him to pay. It included a rug that he had bought for Mr. Bacot, and he discovered that before I did, or he spoke of it before I did, and I said, "Yes, that is true." He took back that check and destroyed it, the check for $95.00, and drew me a check for the difference between $95.00 and $22.50, which was $72.50. That was in 1901. In 1906, when the Commission was seeking to move to new offices, I showed the voucher which the state had paid, except this $46.00 filing case, and it was then that Mr. Record said, with his book in his lap, that "My book shows a check to Mr. Payne of $95.00 and one of $72.50 on the furniture account." I said, "Why don't you show the members of the committee your book?" He said, "That is my business." The book was in the table, it was the property of the state, and was used sometimes by the state, and perhaps it was a reprehensible thing, but I took that book and photographed it. I knew that the $95.00 check had been cancelled and never passed, and about two days before the Commission was to move, Mr. Record called two of the members in and told them that he had had difficulty in finding a table to match the faded color of the carpet, the carpet which the Commission had agreed to leave there, and the filing case he was to relinquish; so he offered a hundred dollars to leave the furniture just as it was, and Mr. Cloke called me in, and I said I had nothing to say except that the furniture cost the state $350.00, and if they wanted to leave it there for a hundred dollars, it would cost us $250.00, and that is all I had to say. The Committee declined to make such an arrangement, and the matter stood as it stood before. Then Mr. Record made the statement again that his book showed that he had paid me $95.00 and $72.50, and I said again, "Why don't you show the gentlemen the book?" I said, "I will tell you why you don't, it is because if you were on the witness stand under oath you would be arrested for perjury, and it don't show any such thing, and I will show them a photograph of it, and showed them a check that he paid me June 1, 1901, J. C. Payne, furniture, and it has written across it in his handwriting, "Cancelled," and the $95.00 is crossed out, and in the margin where you make up your balance to carry forward, he had added a $300 check and a $125 check—this is in 1901—and substracted that from the balance that he was to carry to the preceding page, and carried that balance forward. He would have added the $95.00 if he had paid it. On the opposite page, on June 3, 1901, is the stub of the check that he paid me, $72.50, and I have a photograph of the check with my endorsement on the back, showing that he actually paid me that check.

Q. Are those the photograghs? A. Yes, sir; those are the photographs of the two pages of the book.

BY MR. BARBER.

Q. Did you tell Mr. Record that you had those photographs? A. Yes, sir; I said "I will show the gentlemen why you don't show the book; I will show them a photograph of the book," and I got the photographs and showed them.

Q. Did Mr. Record make any remark? A. He did not; he seemed to be visibly affected, and did not make any explanation.

BY SENATOR WAKELEE.

Q. Was there anything further on this subject at any time said? A. That was the conclusion, and we moved and the filing case was not taken down and the carpet and the book-cases were left in Mr. Record's room, and, as far as I know, are there to-day.

BY THE ATTORNEY-GENERAL.

Q. What object had he in stating that he had paid you $72.50 and $95.00? A. To build up a claim for the furniture that was in the office, to retain it in his possession.

BY SENATOR MINTURN.

Q. I have never been able to understand what the reason was for the Commissioners and their counsel taking rooms together. A. It was a situation of long standing. Mr. Robert C. Bacot was the original engineer of the Board. He had offices to himself—I was his assistant—and had rooms, a great many years back, at 47 Montgomery street. This is tiresome, but I will tell you how the situation grew up. During that time Mr. John Bacot had come across Mr. Record and had taken him into partnership, and they became very intimate, and Mr. John Bacot, through his own good standing and influence, and through the excellent standing of his father, brought a great deal of business to the firm; practically all the business that was ever brought to the firm was brought through Mr. Bacot. That arrangement was transferred to the Fuller Building, and there a suite of four rooms was taken; Mr. R. C. Bacot had one, Mr. Record had another, Mr. John Bacot had another, and there was a fourth room that I did the work of the Commission in, and it was the common room of the two lawyers, Bacot and Record. That situation continued. The Commission then paid, as I understand, half the rent of that. Then we moved down to this building and the same arrangement continued. Mr. Record was closely allied with Mr. Bacot in all his interests. The first work of any account was the Bartlett water scheme, to supply water from New Jersey to New York, and Mr. Bacot and Mr. Record were actively engaged in that. Then the Staten Island Terra-Cotta and the

Snake Hill Trap Rock concern and the Utica Water business, and all those things formed their business, and the riparian end of it was for a great many years a kind of a side issue to the office, and it has not been until—I haven't felt until this present Commission separated itself from Mr. Record—that the Riparian Commission had an identity of its own. That is the way it grew up.

Q. I asked Mr. Cloke when he was on the stand, and I want to ask you, whether you don't think it a wiser policy on the part of the state to have this business done at Trenton, at the State House? A. I think it would be very unwise, because the bulk is up here, the valuable lands are up here, and it is more convenient. Most people would rather come to New York than go to Trenton, and the Commission have always considered that they are serving the interests of the state and the convenience of the applicants for riparian rights, in having their offices in Jersey City. It has been discussed a great many times, and the Commission have always concluded that Jersey City was a better place to have it. The Governors have usually been from this end of the state.

Q. All these reasons that you give apply to every department of the State Government; it is much more convenient for the lawyers to go to Newark than to Trenton. One more question in regard to the covenants which I have inquired about. A. You asked me, Senator, when the clause providing for the recovery by the state of the lands under water, in case of the grantee not having been the owner of the upland, was first inserted?

Q. Yes. A. And I find upon examination of the forms used by the Commission that from October, 1883, to the present time, the printed forms of the Commission have that clause in, and as far back as 1875, and I think by inference as far back as 1872, in some of the conveyances made by the Riparian Commission that clause appears.

Q. The covenant of title in the upland? A. Yes, sir.

Q. And all your conveyances were made upon the truth of that covenant? A. Yes, sir.

Q. Now, I want to ask a question in regard to the consideration that the Commission has given in the past and is giving now, to the question of the oyster and fishery rights, where an application is made for a conveyance of lands under water? A. Yes, sir; it is not now the practice of the Commission to make grants giving the exclusive right of planting and cultivating oysters. At one time there were some grants with that provision in, but the Commission do not, as I understand it—I know they do not now—make them, and I understand it is not their purpose to do so, but they put in the

grant the exclusive right of the state, and let the law govern the uses that it may be put to.

Q. What consideration does the Commission give to an application to transfer land on the ocean front where pound nets are erected? A. I think no application has been presented to the Commission in which the pound nets figured; that is to say, the exterior line on the ocean is not out so far as to interfere with pound nets; or at least no grant has been made that has gone out to any pound net.

Q. The question has never come before the Commission in regard to the pound net fisheries erecting pound nets? A. No, sir.

BY THE ATTORNEY-GENERAL.

Q. I want to ask another question that I am reminded of by the question of the Senator; recurring again to the fact that fee has been for years charged by the counsel of the Board to the applicants of grants, supposed to be made in payment for examining titles, abstracts of titles presented, in order to indicate that the applicant is the owner of the upland, or that notice had been given to the true owner, I want to know from your experience, whether, in fact, these abstracts have been examined by the counsel of the Board, or whether it is not true, that inasmuch as the deed contained a clause that if the grantee was not the owner the grant was void—no examination was, in fact, made at all? A. That is the situation.

Q. So that, in fact, payment was made for services which, in fact, were not rendered? A. Yes; I think that is true.

BY SENATOR MINTURN.

Q. As a matter of fact, is there any report from the counsel on file certifying to the genuineness of the title of the applicant to the upland? A. No, sir.

Q. No request was ever made of him by the Board to make such a report? A. My understanding of the situation was, that while the original law required the Commission to issue a certificate of title before it made a grant, and the practice of the Board had been to have the attorneys in the different counties issue a certificate to the Board, that they had examined the title and that the applicant was the owner of the upland, and the proper person to receive the grant. That practice fell into disuse for some reason or other; I don't know why. The fact is, no attack has ever been made on a grant made by the Commission on that ground, with the exception of the case of Polhemus vs. Bateman, and that was simply where the applicant happened to be the son of the owner. The owner was Luther Bateman, and the application was made by Luther Bateman,

Jr., and in that suit the court set aside the grant for that and other reasons. But that is the only case in the thousands of grants that have been made that the grant has been attacked on that ground.

THE ATTORNEY-GENERAL.—The opinion of the Attorney-General has been asked on several matters by several members of the Committee, particularly Senator Minturn, and this is the time when I hope to get a little vacation, and I want to be prepared before the Committee make their report, to advise them about these matters. We have, of course, further testimony, and I would respectfully suggest that when we adjourn, we adjourn to some time a little later.

SENATOR WAKELEE.—I think also the Committee desires to examine the laws of other States, and I think later we ought to hear from those interested in riparian lands, as to what they think the policy of the State ought to be. That will take time, so I quite agree with the Attorney-General, that when we adjourn, we adjourn for some time.

SENATOR MINTURN.—I was about to make a suggestion before we adjourn, that our secretary or the stenographer might communicate with the respective Boards of Trade for the purpose of having their views on the policy of the present system. I think they are most interested.

SENATOR WAKELEE.—The Attorney-General, perhaps, has some assistant that will do that for us.

THE ATTORNEY-GENERAL.—Yes ; I will attend to that.

SENATOR WAKELEE—I think, personally, it would be very wise to have this testimony printed, and I am going to suggest, inasmuch as we have the same stenographer as we have in the Insurance Investigation, it would save time to instruct him to give this to the printer.

It was moved by Senator Minturn that the stenographer furnish the printer with the testimony, and direct him to print 1,000 copies, which motion was carried.

SENATOR WAKELEE.—Before we adjourn, I desire to say if there are any persons whatever whose names have been mentioned in this investigation, so far, or any other persons who are interested in the subject of riparian grants, desire to furnish any testimony to his Committee, and will inform myself, or the Attorney-General, at hearing will be arranged for them.

The Committee then adjourned, subject to the call of the chair.

CHANCERY CHAMBERS.

Jersey City, August 22, 1906.

Meeting of Special Committee of the New Jersey Legislature to investigate the granting of Riparian Lands by the State, &c.

PRESENT:

SENATORS WAKELEE (Chairman), MINTURN and AVIS, and ASSEMBLYMEN BARBER, HOLCOMBE, JONES, CROWTHER and REED.

ATTORNEY-GENERAL MCCARTER.

SENATOR WAKELEE.—In opening this session of the Committee I desire to make the following statement for the record:

When this Committee met in July the Committee adjourned, as shown by the record, to meet on August 7th, and both at the July and the August meetings the Committee publicly decided and stated that the Committee would then adjourn until September. After the adjournment of August 9th under these circumstances, on Monday, August 12th, 1906, I received the following letter from Mr. George L. Record:

Aug. 10, 1906.

HON. EDMUND W. WAKELEE,
Chairman Senate Riparian Investigating Committee.
No. 47 Cedar St.,
New York City.

Dear Sir:

Confirming my telephone conversation with you this morning I request that you call the Senate Riparian Investigating Committee together at once and afford me an opportunity to reply to the various charges and insinuations made against me by the Secretary of the Riparian Board, Mr. John C. Payne. I further request that at this hearing you will afford me an opportunity to cross-examine Mr. Payne, and that you subpoena and put upon the stand the present and former members of the Riparian Commission, to wit, Messrs. Cloke, McLaughlin, Reynolds and Williams, the present members, and Messrs. Willard C. Fisk, John I. Holt and John J. Farrell, and examine them in reference to these charges made by

Mr. Payne. The charges made by Mr. Payne are so utterly false and scurrilous and so obviously intended to injure me at this particular time in the public mind, that as a matter of common fairness and justice I am entitled to an immediate opportunity to be heard in reply.

Very truly yours,
GEORGE L. RECORD,
B.

I immediately took the matter up by telephone and although I spent considerable time I could not reach the members of the Committee. I then went to Newark and consulted with the Attorney-General.

The same afternoon I sent the following letter to Mr. Record :

New York, August 13th, 1906.

HON. GEORGE L. RECORD,
Corporation Counsel,
Jersey City, N. J.

Dear Sir :

Your favor of the 10th inst. was received by me this morning. In reply thereto I have to state that at the last hearing of the Legislative Riparian Investigating Committee, it was decided to hold the next meeting of the committee some time in September, but not being able to agree upon the exact date, the Committee adjourned subject to the call of the chairman, but with the distinct understanding that it would be some time during the month of September.

Upon the receipt of your letter, I immediately communicated with the Attorney-General and such members of the Committee as could be reached, and I find that some of them have already gone on their vacation and others are going during the current week. I therefore do not think it possible to get the Committee together before September. However, in accordance with your request, I will immediately communicate with all the members of the Committee, and do my best to bring about a meeting as soon as possible.

I do not reply to the other matters suggested by your letter but will present the same to the Committee for their action.

Very truly yours,
(Signed) EDMUND W. WAKELEE.

The next morning I forwarded copies of the above correspondence to each member of the Committee and requested an immediate reply.

On Friday, August 17th, I had not heard from all the Committee but replies having been received from a majority, and the Attorney-General consenting to forego his vacation, I took the responsibility of calling this meeting contrary to the expressed wishes of the Committee at the last meeting.

I also, on August 17, 1906, mailed Mr. Record the following letter :

New York, August 17th, 1906.

HON. GEO. L. RECORD,
Corporation Counsel,
Jersey City, N. J.

Dear Sir :

In my letter to you of the 13th inst. I stated that I would do my best to bring about a meeting of the Legislative Riparian Investigating Committee as soon as possible. This is to inform you that the Attorney-General and the members of the Committee have consented to give up their vacations, and I have called a meeting of the Committee for next Wednesday, August 22nd, at 10.30 a. m. at the Chancery Chambers, Jersey City.

A copy of your letter of the 10th inst. was forwarded by myself to each member of the Committee and the matters mentioned therein will be taken up by the Committee at that time.

Yours truly,
(Signed) EDMUND W. WAKELEE.

In accordance with the above we are here, and I want to say most emphatically that there is not now and never has been any attempt or desire on the part of the Committee to injure anybody, except so far as sworn testimony and documentary evidence presented to the Committee in the regular and proper course of its inquiry might do so. We are charged with the duty of investigating the methods pursued in the past in the granting by the State of leases and grants of riparian lands, and the entire subject of these grants and leases, and we call publicly upon anybody and everybody who has any information on the subject to come before the Committee to the end that the investigation may be thorough, searching and complete.

This session today is, therefore, in compliance with Mr. Record's request.

THE ATTORNEY GENERAL.—At the close of book number three of the record of the proceedings of this Committee the following statement by Senator Wakelee appears :

"SENATOR WAKELEE.—Before we adjourn I desire to say if

there are any persons whatever whose names have been mentioned in this investigation of the Board, or any other person, who are interested in the subject of riparian grants, who desire to furnish any testimony to this Committee and will inform myself or the Attorney-General, a hearing will be arranged for".

Pursuant to that request Mr. Record has suggested that this extraordinary session of this Committee be convened for the purpose of permitting him to make a statement before the Committee under oath in attempting contradiction of some of the evidence given in the course of the investigation.

I therefore suggest that this opportunity be now afforded Mr. Record.

MR. RECORD.—Gentlemen of the Committee, the Attorney-General misstates my communication. The communication speaks for itself. I come back from the State of Maine and find the newspapers ringing with charges that this Committee has brought out against my character; I make a demand that I be given a chance to cross-examine the man who is responsible for it and that I be given a chance to give my statement and that every man who has had any connection with this thing be put upon the stand and that it all be threshed out immediately without any adjournment. That is the demand I reiterate and I am here ready to go on with the matter now.

SENATOR WAKELEE.—I understood the suggestion of the Attorney-General was that if Mr. Record desired to be a witness he could now be sworn.

SENATOR AVIS.—That is the first request you make in the letter, Mr, Record.

MR. RECORD.—Read the letter.

SENATOR AVIS.—"Confirming my telephone conversation with you this morning, I request that you call the Senate Riparian Investigating Committee together at once and afford me an opportunity to reply to the various charges and insinuations made against me by the Secretary of the Riparian Board"—and then there is a comma, and it continues "Mr. John C. Payne," and then there is a period.

MR. RECORD.—Go ahead.

SENATOR AVIS.—Then you say "I further request."

MR. RECORD.—Well, read all of the letter, will you?

SENATOR AVIS.—Senator Wakelee has already read the letter and it is in the record; everybody understands what that is and I am merely expressing my—(interrupted)

MR. RECORD.—Drop the periods and drop the commas and get

down to business. I desire a chance, before I make my explanation, of cross-examining the man who makes the charges.

SENATOR AVIS.—As far as I am concerned I shall insist that, in accordance with your letter, you make your statement first. The rest of the Committee can do as they please.

THE ATTORNEY-GENERAL.—I think perhaps it is right that I should say this for the Committee, expressing, of course, only my own ideas.

I had supposed, and am surprised that any other suggestion should be made that Mr. Record, to quote his own language, should be afforded an opportunity to reply to the evidence given against him. But he also says he desires to cross-examine one of the witnesses. Now, every one of this Committee will remember that in the most famous legislative inquiry perhaps, that ever took place, the insurance investigation by the Hughes committee in the State of New York anyone who felt himself accused by the disclosures before that committee in vain sought an opportunity to cross-examine; the same thing is true of the Voorhees Investigating committee in this state and of every other investigation I have ever heard of, and if this Committee is going to allow Mr. Record to cross-examine Mr. Payne it will be an unusual proceeding. So far as I am concerned I am in favor of his being granted the privilege, but I think if he is to have that extraordinary privilege it should be in the regular course of events and after he has made his own statement under oath, which he has made a demand to have an opportunity of giving. I therefore suggest that we proceed in that way.

MR. RECORD.—Gentlemen, I suggest that the Committee take a vote on the question of whether I shall have an opportunity to cross-examine Mr. Payne now.

SENATOR WAKELEE.—This Committee cannot very well consider a request made in that way; this as a Legislative Investigating Committee, and while we want information we are not to be guided in that way as to the course of the Committee.

ASSEMBLYMAN REED.—I understood that the call for this meeting of the Committee was by special request so that Mr. Record should be heard. That is how I have seen it quoted in the newspapers, so that he might be given an opportunity to reply to these charges made against him; it was for that reason that I came here today.

MR. RECORD.—Do you refuse me the privilege of cross-examining Mr. Payne at this stage of the proceedings?

SENATOR WAKELEE.—I understand that is the position of the Committee.

MR. RECORD.—I demand that privilege.

SENATOR MINTURN.—I think that Mr. Record should have an opportunity of cross-examining Mr. Payne at this time. It is a matter which involves the reputation of Mr. Record as a fair man and he is entitled to be heard in a regularly judicial way, and I think that Mr. Record should be entitled to cross-examine Mr. Payne at this time.

I shall so vote.

ASSEMBLYMAN BARBER.—I am in favor of acceding to Mr Record's request as expressed in his letter, that he be given an opportunity to reply to these charges. After that I am in favor of Mr. Record having an opportunity to cross-examine Mr. Payne upon the points which refer to himself. I object to Mr. Record assuming the position of counsel to the Committee and dictating to the committee how it shall conduct the investigation.

It seems to me it is entirely fair to Mr. Record, when members of the Committee at personal inconvenience have come here to give him an opportunity to be heard as he requests, that it is entirely fair that they give him that hearing and then follow that, although contrary to the precedents established by other investigating committees, by giving him an opportunity to cross-examine.

MR. RECORD—I renew my demand for an opportunity to cross-examine Mr. Payne.

SENATOR AVIS—I would like to ask Mr. Record whether it is his idea that he should have the right to cross-examine Mr. Payne and then call the other witnesses to whom he refers, before he makes a statement himself.

MR. RECORD—Those gentlemen, I don't care anything about when they are called, but Mr. Payne and the Attorney-General by putting only parts of the records before this Committee have put before this Committee things which carry insinuations in the public mind.

SENATOR AVIS—That is not what I was inquiring about.

MR. RECORD—I want this threshed out before I make my statement.

SENATOR AVIS—Do I understand your position to be that you now desire to cross-examine Mr. Payne and then, as far as you are concerned you are willing to go on the stand at that time and make your statement and submit to cross-examination?

MR. RECORD—So far as I now see it, yes.

I reserve the right to take whatever stand I choose before this Committee as things develop. I am here with a careful statement

which I intend to get before this Committee some time during the day—my own.

SENATOR AVIS—You will be given every opportunity to make any statement you desire to before the Committee.

MR. RECORD—I desire first to bring out certain facts which have been left out either intentionally or inadvertently, and then my explanation will depend on those facts.

What is the use of my trying to make an explanation, for instance of the Donahue business, which I know nothing about, and which the record shows there is no opinion of mine on file concerning; which happened years ago and which I know nothing about and can know nothing about from recollection.

SENATOR AVIS.—The only person who has made any charges against you, as I understand, in this investigation is Mr. Payne.

SENATOR WAKELEE.—I do not understand that Mr. Payne has made any charges.

SENATOR AVIS.—No, not any charges at all but matters which Mr. Record takes exception to ; I did not mean it in that way.

MR. RECORD.—I say he has made specific charges.

SENATOR AVIS.—Those are the things you take exception to.

MR. RECORD.—Yes, that is right.

SENATOR AVIS.—And those are the only things in this investigation that you take exception to?

MR. RECORD.—No, there are some other things.

SENATOR AVIS.—In the testimony?

MR. RECORD.—In the testimony, and that I demand the right to cross-examine about.

SENATOR AVIS.—Cross-examine who?

MR. RECORD.—Mr. Payne.

SENATOR AVIS.—Well, that is all right.

SENATOR WAKELEE.—I would like to ask Mr. Record in the light of the history of legislative investigations on what he bases his request to cross-examine, at all.

MR. RECORD.—On the principles of elementary justice. You people, intentionally or otherwise—I will say otherwise for the purpose of being fair, have managed to get in the newspapers the implication that somehow or other in the thirteen years while I was counsel for the Riparian Commission my acts will not stand criticism in several respects. Now, I come here in common fairness and I ask the privilege first of examing the man who is responsible for this statement. That is common justice; there is no precedent in legislative investigations.

SENATOR WAKELEE.—What is there in this situation that did not apply to the insurance investigation in New York.

MR. RECORD.—I don't know anything about that; I know Mr. Hughes never refused to allow any question to be put to any witness at any time, and you know it.

SENATOR WAKELEE.—I do not think this Committee will.

MR. RECORD.—What is the difference in my putting the questions through Mr. McCarter or my putting them myself?

SENATOR WAKELEE.—There seemed to be a difference in the insurance investigation and in every other investigation, too.

MR. RECORD.—All right. I press my demand for an immediate cross-examination of this witness and without any agreement as to what I will do afterwards.

SENATOR WAKELEE.—The motion before the Committee is that, in accordance with the suggestion of the Attorney-General, we acceed to the request of Mr. Record and give him now an opportunity of going on the stand and making such a statement under oath as he may now see fit, as he offers himself as a witness.

THE ATTORNEY-GENERAL.—To be followed by the right to cross-examine Mr. Payne.

SENATOR WAKELEE.—We are not deciding that now.

SENATOR MINTURN.—I desire to say that I look upon these proceedings today as a departure from the original program of the Committee which was to investigate the granting of Riparian rights. During the investigation it cropped out that a man—a public man's character is involved; he asks for a hearing. I think that hearing should be entirely judicial; I think Mr. Record should have the right in the first instance to cross-examine Mr. Payne on the matters which affect his good name; after that he has a right to go upon the stand if he so wills it, or sees fit, and deny the allegations.

That is my position.

SENATOR WAKELEE.—Are there any further suggestions on the part of the Committee?

If not the secretary will take a vote.

A vote was then taken.

ASSEMBLYMAN BARBER.—All of the members of the Committee with the exception or Senator Minturn and Mr. Holcombe have voted aye.

SENATOR WAKELEE.—The motion is carried.

MR. RECORD.—What is the position of the Committee?

SENATOR WAKELEE.—You will now be given an opportunity to go upon the witness stand.

MR. RECORD.—I enter my formal protest against this action of the Committee and desire that it be entered on the minutes.

My voice is very tired and I ask the permission of the Committee to have this statement read as my statement and I will swear to it.

If the Committee requires it I will read it myself.

SENATOR WAKELEE.—The Committee would be very glad to have it read for you, but we have no clerk.

MR. CAREY.—I will read it.

GEORGE L. RECORD, ESQ., being duly sworn according to law, testified as follows:

SENATOR WAKELEE.—As I understand it, the statement Mr. Carey will now read is the sworn testimony of Mr. Record?

MR. RECORD.—Yes, sir.

THE ATTORNEY-GENERAL.—And we will have the right to cross-examine upon it?

MR. RECORD.—Yes, and you won't find me dodging any cross-examination.

Mr. Carey then proceeded to read the following statement:

As to the grants to various railroads of a license to cross lands of the State under water, the following are the facts:

The first license mentioned is that of the Navesink railroad. Somewhere in the fall of 1890 or the spring of 1891, I was retained by the general counsel of the Central Railroad of New Jersey, upon the subject matter of the change of their seashore railroad on Sandy Hook across the bay to the Atlantic Highlands shore They had been warned off by the Government and desired to construct a new road and have it in operation by the time the summer season of 1891 opened. This employment it was entirely proper for me to accept. I was not then counsel to the Riparian Commission. Mr. Payne testifies that I was the local counsel in Bergen and Hudson counties. I think he was mistaken in this. My recollection is that Mr. Vredenburgh was the local counsel until I became the general counsel of the Board. I may have been employed to certify to the correctness of titles of riparian applicants in Hudson and Bergen counties, but that was the limit of my employment, and I held no relation to the Board which led them to rely upon my advice upon any applications, nor did I pretend to advise them, nor did they pretend to rely upon my advice in this matter. Under these circumstances I accepted the retainer, and advised the Railroad Company to apply to the Board for a license to cross the lands of the state under water, under the 36th section of the General Railroad Act. My recollection is that several other counsel were in this matter. I appeared before the Board openly, and every

member of it knew that I was acting as counsel for the Railroad Company. The point was a novel one, and it was submitted to the Attorney-General, as the minutes of the Board prove. I have been unable to obtain the minutes of the meeting on the day the grant was made. My recollection is, that on that day, or at some hearing prior thereto, the Attorney-General appeared before the Board and the whole matter was discussed, and the Attorney-General advised the Board that they could grant the license in question; whereupon the Board fixed the sum of twelve thousand dollars, and executed the license. In any aspect of the case no criticism whatsoever attaches to me.

The application of the Atlantic Ocean Railroad Company for a road in front of the beach in Atlantic City is introduced into the case, apparently for the purpose of giving the impression that an opinion that I rendered at that time, and in which opinion Attorney-General Stockton concurred, was contradictory to the opinion in the Navesink case and to the action of the Board in the New Jersey Shore Line Railroad Company case, and in the Edgewater and Fort Lee Company case, where similar licenses were granted. The opinion in the Atlantic City case, however, is based upon other grounds than prevailed in the matter of these licenses. The conditions there were very different. The Atlantic City case was simply an attempt to construct a trolley line along the beach front of the ocean. It was in no sense a bona fide railroad and it did not come under the thirty-sixth section because it was neither a bay nor a river, nor a harbor, but was on the open ocean, and it has always been in my mind a question whether the state had any rights below low water mark in the Atlantic Ocean. The substance of my opinion was that a trolley railroad could not be built along the beach front of Atlantic City, and the result was that no grant was made. I have no recollection of the grants of the subsequent licenses in the matter of the other two roads, except generally that such licenses were granted. Nothing appears in the testimony to show that I gave any written opinion to the Board with reference to them. Testimony is given that one of the Commissioners asked me if it was necessary to notify the shore owners, to which it is said that I replied that it was not. In my opinion, this answer, if it was ever given, was correct, and the license, if it was valid at all, was valid without notice to the shore owners. Whether or not it would bind the shore owner was at that time a disputed question which I understand the courts have passed upon since. The minutes show that this application was granted at a meeting at which Governor Murphy was

present and where Mr. P. Sanford Ross of Newark appeared in favor of the application. The question of what the price should be was entirely within the discretion of the Commission and was determined in the presence of Governor Murphy and the full Commission. I had no part in fixing the amount or making the award. In my judgment the opinion which I rendred in the Atlantic City case did not apply to this case, the conditions being very dissimilar The Committee and the public, however, will be greatly interested to learn another chapter in the history of this Edgewater and Fort Lee Railroad Company license, which was not brought out at the former hearing. It seems by the minutes in 1902 when the grant was originally made, it was subject to the condition that the railroad should be constructed before the expiration of two years, or the license would be void. From the minutes of the Board of July 28, 1904, it appears that this identical matter came up again and that the license had become void on account of the company having failed to construct the road within the two years, and they appeared and applied for an extension of the license. At that time my office of counsel to the Board had been abolished and all the members of the Commission who granted the original license two years before had retired except Commissioner Cloke and Governor Murphy. The minutes of that day contain the following significant statement:

PRESENT.

Governor Murphy and his Secretary, Mr. Dalrymple, Attorney-General Robert H. McCarter, Assistant Attorney-General John L. Swayze, Commissioners Cloke, Williams, McLaughlin and Reynolds.

"In the matter of the license to the Edgewater and Fort Lee Railroad Company, to build a railroad over and across lands in the State from Edgewater to Fort Lee, executed by the Board May 28, 1902, and expiring May 28, 1904, Mr. Willard C. Fisk, representing the Edgewater and Fort Lee Railroad Company, Mr. Brownell, representing the Erie Railroad Company, and Mr. P. Sanford Ross, appeared. It was decided by the Board to extend the time to build the road under the said license for two years from May 28, 1904, under the condition that the road be constructed and in operation within that time".

This license was subequently executed and the Attorney-General wrote a letter thereon, of which the following is an extract:

"NEWARK, N. J. Sept. 9, 1904.

"MR. JOHN C. PAYNE, ESQ.,
Secretary Riparian Commission,
Commercial Trust Building,
Jersey City.

My dear Sir :—

I have examined the form of the proposed extension of license from the Riparian Commission to the Edgewater and Fort Lee Railroad Company which you sent me. The same seems to be in all respects correct, and you may consider this letter my approval thereof.

ROBERT H. MCCARTER,
Atty. Genl."

It thus appears that testimony has been presented under the guidance of the Attorney-General, the apparent object of which is to indicate that a license was granted to a railroad company to cross lands of the state, presumably by my advice, and the inference is hinted at that the license was either illegal or was granted at too small a sum, or ought to have been attended with notice to the land owners. The facts are carefully suppressed that the license was only for two years, was granted in the presence of Governor Murphy after elaborate discussion, and that after it had become void according to its terms, it was renewed for a further period of two years in the presence of the Attorney-General, his assistant, the Governor and his private secretary, and a full Board, with which I had no connection whatsoever, and that the license itself was approved by the Attorney-General in a subsequent written opinion. In other words, when I was counsel to the Board it obtained $1,500 for a license for two years which was subsequently granted for nothing after I ceased to be counsel.

As to the matter of the fees which I received, I never received a dollar of fees to which I was not legally and morally entitled. The fees were paid to me by an arrangement with the Board. I had the right to charge them, and to accept them, and I rendered a full equivalent of service therefor. Before I became counsel to the Commission the fees had been collected by various counsel in different counties of the state, and I understand that these fees had sometimes been as high as two or three hundred dollars. An arrangement was finally made, between the Board and myself and my firm, by which we jointly shared the rent of the offices, the telephone, charge and expense of clerks, and I became General Counsel

to the Commission. By this arrangement I was to have a salary and the fees which theretofore had been collected by the different counsel. These fees were very much reduced in amount, generally running from ten to twenty-five dollars. I shared these fees with Mr. Payne, and between us we paid the expenses of the clerks whose services were utilized by the Board in copying the grants into books of record and in the other business of the Commission. The result of this arrangement was that the expenses of the Commission were materially reduced, and the fees of the applicants were lessened. In making this arrangement the fact of my receipt of these funds was taken into account both by the Board and by me. In a statement which I have given to the public I have gone at length into this matter, and I herewith submit to the Commission a copy of that portion of said statement.

MR. CAREY.—Is that in?

MR. RECORD.—Just file that with the Committee.

The statement referred to is as follows:

1. As to the charge in reference to illegal fees, I assert that I have never received one dollar in fees which were either illegal in themselves, or to which I was not entitled by an arrangement with the Board. In order to understand this matter of fees it is necessary to set out the conditions under which I finally became counsel to the Board.

About 1889 I formed a partnership with John V. Bacot, whose father was secretary and engineer of the Riparian Commission, and had been such since the creation of the Board in 1869. At that time the Board had offices at No. 47 Montgomery street, and they employed Mr. Bacot at a salary of $5,000, and John C. Payne as draughtsman and copyist at a salary of $1,500, and the State paid for the rent of the rooms at that place.

By an arrangement made between my firm and the Board at the commencement of my partnership with Mr. Bacot we jointly hired five rooms in the Fuller building, two of which were occupied by my firm, one by Mr. Bacot's father and another by Mr. Payne and by a clerk and a stenographer employed by my firm. The fifth room was occupied by Judge Randolph as a private office, he being then one of the members of the Board. The judge shortly afterward died. Mr. Bacot and I gave up one of our rooms and fitted up Judge Randolph's room as a general meeting room for the Board, and Mr. Bacot occupied this room when the Board was not in session. Under this arrangement the Board had the use of one room as a meeting room and the constant use of the other by Mr. Bacot,

Sr., and shared the third room as an office for Mr. Payne and the clerks of our firm.

At that time the practice was for applicants to submit abstracts of title to the upland which were referred to the different counsel of the Board in the different counties who examined the title and made a report thereon for which they charged a fee, as I now recollect, varying from $25 upward, according to the difficulty involved in the title, and any expense that they might have incurred. This fee was collected at the time the grant was delivered and was made payable to the local counsel and forwarded to him by Mr. Bacot, Sr., the secretary of the Board.

After a while the Board fell into the habit of asking me to pass npon certain questions which came up before the Board from time to time, such as cases of disputes between applicants, etc., or any business out of the usual routine line. Mr. Bacot, Sr., began to get along in years and gradually Mr. Payne began to discharge many of his duties. The work of the Board also increased. This led to a gradual use of one of our clerks as a copyist and the other as a stenographer.

During Governor Werts' term, this condition led to a suggestion that I be made formal counsel to the Board. I served as counsel for upward of a year, as I now recollect, before compensation was determined upon. Whether I examined titles during this time or not I have now forgotten. If I did not, the fees were collected and sent to the local counsel as formerly ; if I did, they were collected and turned over to me. Finally, in Governor Werts' term, as I now recollect it, I was put on a salary of $1,500 a year. Shortly thereafter Mr. Bacot was made consulting engineer and Mr. Payne was promoted to be secretary and engineer at a salary of $2,500.

A little later Mr. Bacot, on account of advancing years, withdrew entirely from connection with the Board. At this time the practice of the Board in using the clerks of our firm had become constant, and Mr. Payne finally suggested an arrangement between my firm, himself and the Board, upon the following basis : He was to receive his salary, I think, $3,500 ; he was to contribute toward the expenses of our two clerks at the rate of $25 per month. I was to receive my salary and the fees for searching titles. These fees, however, were to be reduced in amount and were to be equally divided between Payne and myself, and our two clerks were to do all of the clerical work of the Board. The rent was to be divided equally and the telephone charge was to be paid one fourth by the Board and three-fourths by my firm. Mr. Bacot and I told Mr. Payne that we would agree to this arrangement if the

Board would sanction it. He reported to us that he had made this arrangement with the Board, and it was thereafter carried out. I am not sure that this arrangement was all made at one time, but it was the final agreement under which we worked for many years. It should be remembered that each of the deeds granted by the Riparian Commission was voluminous and that under the law it was necessary to copy it in long hand into a special record letter book kept for that purpose, and further, that under the law the Riparian Commission office was a public office, and was required to be kept open at all times like all other public offices, and its records were subject to inspection at any time by the public. It should be remembered also that the practice of charging fees to the applicants had existed from the creation of the Board. It should be remembered also that my services as counsel to the Board were never strictly defined. I attended all of the meetings of the Board. I started at the very beginning of every controversy that arose and listened to all of the evidence that appeared at hearings before the Board. I accompanied the Board and representatives thereof to all parts of the state on tours of inspection of lands of applicants ; I assisted the secretary and engineer in the fixing of the descriptions of the land under water, which was often a difficult matter owing to the fact that the shore line was curved and it was a question of difficulty oftentimes how much land under water was to be apportioned to the adjoining shore owner.

In addition to this, I and my partner, Mr. Bacot, who was entirely familiar with the riparian business, took charge of the office at times when Mr. Payne was absent either on his personal business or when he was in different parts of the State making surveys for the commission or on other official business. All of these duties, the question of rent and telephone and use of our clerks were considered together in establishing the final arrangement which grew up out of these circumstances. The effect of this arrangement was of advantage to all.

Before this relation grew up the cost to the State for the support of the Riparian Commission was $5,000 to Mr. Bacot, $1,500 to Mr. Payne and office rent and stationery which, I assume, amounted to $400 or $500 more, or $7,000 in all. In addition to this the applicant paid from $25 up when he received his grant. Under the new arrangement the cost to the State was $3,500 for Mr. Payne, $1,500 to me and the rent, which amonnted to say, $60 ; in all, $5,360. The State therefore saved some $1,700 by this arrangement over that which was in vogue when they came to my office, and had the additional benefit of special counsel for its special

work, and by reason of a copyist and of a stenographer the office was much better equipped. The fees were cut down and a nominal charge of $10 or $15 was usually made. In exceptional instances, owing to peculiar conditions, this charge was sometimes exceeded, but my recollection is that this was a rare occasion. These fees under this arrangement were divided equally between Mr. Payne and myself.

The practical effect of this arrangement, therefore, was that these fees were not really paid to me or my firm, but were the method by which the Board, without expense to the State, paid for the hire of clerks necessary for its business. These clerks were paid $1,300 a year by my firm, and I received in fees perhaps $300 or $400 a year plus $25 a month from Payne.

The practice was when a deed or lease was ready for Mr. Payne to write a letter to the applicant directing him to draw a check to the order of the State Treasurer for the amount of money named as the purchase price in the lease, and also directing him to draw another check to my order for the sum of $10 or $15, or as the case might be. Both of these checks were sent to Mr. Payne ; one was transmitted to the State Treasurer and the other was handed to me. At stated intervals Mr. Payne presented an account of the amount which I had received in this way and I drew my check to him for one-half thereof. This arrangement continued until the position of counsel to the Board was abolished. It was, on my part, done openly and above board, and pursuant to what I had good reason to believe was an agreement made with the Board.

Mr. Payne was the accredited representative in all such matters of the Board. He rendered to them monthly statements and vouchers, and from him I received the Board's share of the rent and of the telephone charge. As these items were continually passed by the Board I had every reason to suppose that the rest of the bargain was equally known to it. The Board fully understood this or it did not. In either event I had every reason to suppose that it did. If it didn't then Mr. Payne kept back from the Board a very important part of the business thereof, and was plainly derelict in his duty.

The members of the Board certainly had visible knowledge that the clerks were employed in the business of the Board. Governor Werts tells me today that he always understood that this was the arrangement, and that after he left the office of Governor he appeared before the Board on behalf of clients, and on receiving the grants sent Mr. Payne two checks in accordance with the practice which I have before stated, and that his recollection was that he

knew of this arrangement while Governor and as such, a member ex-officio of the Board. My connection with this whole matter was open and above board, made with the Board through its recognized and appropriate agent, and for every dollar received a fair equivalent in service was rendered, both to the State and to the applicant, and fees in themselves were legal and had been collected from the foundation of the Board.

As to the grant to Goetschius, the facts brought out in the testimony of Payne are intended to convey the impression that I induced the Board to make a grant for $50.00 of property which was very valuable. This is absolutely untrue, and there is nothing in the facts of the case to warrant any such suggestion or inference. This inference is made up by skillfully introducing into the testimony extracts from letters of mine to Senator William M. Johnson and extracts from the opinion which I rendered in the case. The full text of my letters to Senator Johnson and of my opinion absolutely disprove the substance of this insinuation. I herewith file with the Board complete copies of these letters and of the opinion.

The opinion is as follows :

TO THE RIPARIAN COMMISSIONERS OF NEW JERSEY.

Gentlemen :—I herewith submit my report and opinion upon the application of John M. Goetschius for a grant of lands under water at Fort Lee.

The property in question lies in front of lands owned by the said Goetschius, which are commonly known as the Annett property. Prior to 1845, Robert Annett, the then owner of the upland, had constructed two wharves upon the land under water included within the application of Goetschius. These wharves were constructed without any license or authority from the State. In 1844 an act of the Legislature was passed, a copy of which is hereto annexed. This act recites that Robert Annett was the owner of the said upland and that he had built two wharves, describing the dimensions thereof, and that he desired to extend the same and was unwilling to incur the expense thereof without an Act of the Legislature confirming in him the right to maintain the wharves already built and to extend the same one hundred feet further into the Hudson river. Section 1 of the said Act makes it lawful for said Annett, his heirs and assigns to extend said wharves one hundred feet further than they now are into the Hudson river, and also to build, erect, keep up and maintain other wharves if he or they shall deem proper to do so, upon and in front of said lands. The other sections are not relevant to this inquiry. In the case of Michael O'Neill against Robert Annett, decided by the Supreme Court in 1859, the Court

held that these particular wharves were private property and were not in any sense public wharves. This would seem to establish the fact that the public had no rights in these wharves and would have none in any that might be built by the said Annett, his heirs and assigns. I think this fact would establish the principle that the Annetts' rights under this Legislative Act could not be forfeited by non-user. The principle of forfeiture by non-user seems to apply, so far as I can ascertain, to franchises like ferry privileges, in which the public have a direct interest.

There is nothing in the Riparian Acts which directly attempts to repeal any legislative grant. In the repealer of the Wharf Act there is a provision which explicitely provides that the repealer shall not be construed to repeal any grant or privilege theretofore made by the legislature to any riparian owner. I am, therefore, of the opinion that the Act of the Legislature, hereinbefore referred to, and the action of the Annett heirs and assigns in maintaining the wharves referred to, constitute a grant of an interest or estate in this land under water, which has not, and cannot, be repealed by the Legislature, and that Goetschius, as the assignee of the rights of Annett, could prevent any grantee of the Riparian Commission from improving, in any way, the lands under water in front of the upland in question.

Under these circumstances, the rights of the state, if any, to the lands under water are practically without value. In one or two instances, under somewhat similar circumstances, as for example in the Donohue grant, it has been the practice of the Board to make a grant for a nominal consideration, and I am of the opinion that such a course should be followed in this instance.

MR. RECORD.—I would like the letters to be read; they give such a different expression from the abstracts.

The letters are as follows :

HON. WM. M. JOHNSON,
Postoffice Department,
Washington, D. C.

My Dear Senator :

Your letter of January 9th to the Riparian Commission in reference to the land owned by your client, Mr. Goetschius, of Fort Lee, was referred to me by the Commissioners at their meeting yesterday.

I understand from our maps here that the wharves in question are the original wharves or the extensions thereof mentioned under that portion of the act which gives authority to extend the said wharves out one hundred feet into the river. If this is the fact,

Mr. Goetschius would not have the right to extend his wharves out to the present exterior line without the permission of the Riparian Commissioners. In that respect he would be in the position of all other grantees of the state's lands who have taken title according to the form of grant in use here during the last few years, which vests in the grantee the right to build wharves out to the exterior line as established at the time of the grant, and recites that in case the exterior line is thereafter fixed further out into the river the grantee shall have the first right to buy the additional land included between the old and the new exterior lines at a price to be fixed by the Riparian Commissioners.

It has been the practice of the Board in fixing prices in such cases to waive the front foot charge and to make a charge of the acreage involved at some reduction from the average charge in force in the locality in question.

It seems to me that your client is in the position of being unable to build his wharf further out into the river, without buying the state's land, and the state is in the position of being unable to sell the land in question to anybody except your client or his assignees. Under these circumstances, an attempt should be made, in my opinion, to do what would appear to be the fair thing.

The Commissioners have realized for the land under water above Fort Lee at the rate of $750 per acre, and $40 per foot front. The land involved in your client's matter is about two acres, which at the rate mentioned, waiving the charge per foot, would call for a payment of $15,000

Kindly let me know what you think of this suggestion. I presume the Commission will be guided by whatever report I make upon the matter.

Very respectfully,
GEORGE L. RECORD.

HON. WILLIAM M. JOHNSON,
Post Office Department,
Washington, D. C.

My Dear Senator :

I have your favor of the 5th instant in reference to the Goetschius property at Fort Lee.

In reading the act in question it seems to me that the clause which you quote authorizing the "Annett people to build other wharves in front of their lands", applied to the portion of the State's lands other than the part where the then existing and present wharves were already located. In other words, it seems to me

that the Legislature intended to make a grant to the Annetts to extend the wharves already in existence one hundred feet out into the river, and to authorize them to build other wharves on other portions of their land, limiting the extension of such other wharves to the obstruction of navigation, which limit, I suppose, in this instance, would be out to the exterior line for solid filling, that being the line established by the State within which the erection of a wharf is not an obstruction to navigation.

Of course, I see plainly that to follow this interpretation out to its logical conclusion, the act would authorize Mr. Goetschius to build a wharf on one portion of this property out to the exterior line, while limitlng him, as to the wharf now in existence, to one hundred feet, which seems illogical. Your idea seems to be that "other wharves" means wharves which are intended to replace the original ones which were limited to one hundred feet. This seems to me to be equally illogical. Would the State limit a grant as to a wharf in existence to one hundred feet, and in the same act give a man permission to tear that wharf down and build another wharf further out than the one hundred feet?

The fact is that these old grants of the Legislature were very carelessly drawn, and it is almost impossible to state what they do mean. None of them have ever been interpreted by the courts, and I should be in grave doubt as to what interpretation they would put upon this grant if the same were involved in litigation.

I suggest, therefore, in line with my former letter, that you consult Mr. Goetschius and make us some kind of an offer for the State's right, whatever it is, without admitting on your part that there is any right, and accompany the said offer with your final views on the legal effect of the legislative grant to the Annetts, and I will submit the same to the Riparian Commission at its next meeting. It ought to be possible for us to work out a solution of this matter in a way fairly satisfactory to your client.

I am,

Very respectfully yours,

GEORGE L. RECORD.

The facts, as shown by those papers, are that Senator Johnson commenced a correspondence with me in reference to a tract of land some two acres in extent, and suggests that the rights of the State have been divested by a legislative grant in 1844. I reply to Senator Johnson, suggesting that he come before the Board with his client and that the value in any event will probably not exceed $1,500, and that by a conference with the whole Board and an examination

of his claim of title probably a compromise can be effected. Nothing was done further by Senator Johnson, but the minutes show that in the summer of at a meeting at the Governor's cottage at Sea Girt, Mr. R. O. Babbitt, of the law firm of Babbitt & Lawrence, appeared on the same matter and urged the point of the legislative grant. This point, and this point only, was referred to me by the Commission for my opinion. I found a decision in 1859 on the subject matter of the case and finally gave an opinion to the Board as to the legal effect of this legislative grant of 1844. No other facts were brought to my attention and my opinion deals with no other points except that. I had nothing to do with the making of the grant or fixing the compensation beyond my recommendation. I had nothing to do with the subsequent action of the Board upon this matter. I did not know Mr. Goetschius. I had never seen him I had no interest in the grant directly or indirectly. I had no arrangements, express or implied, with Mr. Johnson or Mr. Babbitt. I simply gave a legal opinion upon a legal point, which opinion I then believed and still believe to be sound. The responsibility for any action after the receipt of my opinion is upon the Board and Mr. Payne.

I understand the claim is made that the Goetschius grant covers land which has been made the subject of a previous riparian grant of a lease upon which rentals were due which were in progress of collection. My representative finds upon the maps in the Commission's office that these leases have been cancelled, and the secretary was unable to explain these records. A representative whom I sent to Trenton yesterday afternoon was told by the clerk that the papers in that case could not be found. I am, therefore, unable to ascertain the exact facts in this matter. If, however, it is true that the Goetschius grant covered land which had been the subject of a previous grant in 1874, then the Goetschius grant was so much waste paper, and in any event could not have the slightest effect upon the rights of the State, as the same were fixed by these leases, provided these leases were in existence and uncancelled. At an early hearing of this Commission an attempt apparently was made to give the impression that it was my duty to collect such rentals, which was not the case. This duty belonged exclusively to the State officials at Trenton, and this case apparently shows that the Attorney-General attempted to collect these rentals as far back as 1891, and that he and the subsequent Attorney-Generals have neglected to prosecute the case. If leases were granted in 1874 and are still uncancelled, they passed into the possession of the State School fund and all power of the Riparian Commission over the

land ceases, except only the power to change the lease into a grant upon the payment of arrears of rentals and the principal sum therein mentioned, and this the Goetschius grant does not pretend to do. If there were any rentals due upon this property at the time the Goetschius grant was made, they are still due, and it is the duty of the Attorney-General to collect them, and the Goetschius grant cannot in any way operate to prevent the collection of these rentals.

As to the charge that I was interested in an application sent to me by Colonel Fuller, the facts are: Acting on behalf of some people in New York I negotiated the sale of certain Riparian property at Shady Side to a firm named Schonberg. My people were represented in New York by a lawyer named Johnson, and Schonberg was represented by another lawyer named Johnson—J. A. C. Johnson, of Englewood.

After this transaction was concluded Mr. J. A. C. Johnson told me that Schonberg might decide in the future to make an applica- for a riparian grant, and asked me if I was in a position to take a retainer. I told him that I was counsel to the Board, and as such could not be interested in any way in any application before the Board. He asked me for the name of some man whom he could retain. I suggested Colonel Fuller.

I did this for two reasons—first, because the Colonel had appeared before the Board in behalf of riparian clients perhaps oftener than any other lawyer, and second, because when I needed friends Colonel Fuller had done me some political favors for which I was grateful, and I was glad to throw any business which I could legitimately in his way. My recollection is that no application was ever made to the Board and nothing was ever done by the Board on this matter.

MR. RECORD.—Right at that point I would ask the Chairman of the Committee if he has received any letters from Mr. J. A. C. Johnson.

SENATOR WAKELEE.—Yes, I have.

MR. RECORD.—Will you kindly submit it now?

SENATOR WAKELEE.—At any time you desire.

MR. RECORD.—I think it would be right in line here.

SENATOR WAKELEE.—I received in the mail this morning this letter (handing letter to Mr. Carey).

(Mr. Carey then read the following letter):

August 20, 1906.

HON. EDMUND W. WAKELEE,
47 Cedar Street,
New York City.

My Dear Senator:

It has been called to my attention that Mr. Record's name has been used in the matter of the application for the riparian lands in front of the property of Mr. A. J. Schonberg in North Hudson before your Committee.

Please permit me to say that after Mr. Schonberg had completed the purchase of this property, I asked Mr. Record if he would represent the owner in the application for the remainder of the riparian grant. Mr. Record declined to do this on the ground that he was counsel to the Riparian Board, and could not appear in any matter before it. I then asked him to recommend a lawyer in Jersey City to me, which he did, recommending Colonel Fuller. Outside of the fact that he represented originally the seller of the property, that is all Mr. Record had to do with the matter.

Yours respectfully,
JAMES A. C. JOHNSON.

SENATOR WAKELEE.—We accept that for what it is worth. It is not testimony.

It is all right though; I know Mr. Johnson.

The testimony of Mr. Payne is evidently intended to give the impression that I was interested in this application to the State with a Mr. Dunham, who was at one time a client of mine and was interested in this land. The facts are that Mr. Dunham at one time held an interest in the land the title to which was in the name of a firm in New York which went into bankruptcy. Mr. Dunham's interest was extinguished and the assignee in bankrupty put the land in my hands for sale, and I tried for several years to effect a sale. Finally Mr. J. A. C. Johnson appeared and opened negotiations to purchase the land and when these negotiations were consummated Mr. Schonberg appeared as his client. It is true that before the deal was closed Mr. Johnson or Mr. Schonberg, or both, asked me my judgment as to what I thought the Riparian Commission would charge for the land under water in case they should effect a sale, and I told them whatever my judgment was at the time, as I had a perfect right to do, and my recollection is that I sent Mr. Johnson to Mr. Payne to get from him his idea of what the price would be in case they should buy the property and apply for the land under water. I never, by any agreement, ex-

pressed or implied, agreed to get this grant for any specific price. My relations were confined to a sale of this land for the assignee in bankruptcy of the firm who held title to it, for which I received a compensation from the assignee and I never received any compensation from Mr. Schonberg or Mr. Johnson, nor did I ever have any agreement with them at any time under any circumstances whatsoever. After the sale was completed and Mr. Johnson came to me I told him that I could have nothing to do with it and sent him to Colonel Fuller as above stated.

This is an old charge and was answered a year ago. I never owed the state any money. I did take out, in common with two other gentlemen, a riparian lease, my interest in which I sold within a month or two, the grantees assuming my share of the rental. This rental remained uncollected for many years owing to the negligence of somebody at Trenton

It was finally taken up by somebody from the Attorney-General's office, and I showed him how to collect the amount in full, which was done. I never individually owed any money to the State on this lease.

MR. RECORD.—I would like to say personally, right here, it is not in this statement but since that was made up last night, somebody has suggested or it has appeared in some newspaper that I was also interested in another lease, that issued to Van Buskirk and others. I have no recollection whether I was interested in that or not. If I was, the same point applies. It has been paid, and Mr. Van Buskirk is amply responsible, too. I owe nothing under it.

As to the charge that I am in possession of office furniture belonging to the State, it is absolutely false. Practically the entire furniture of the suite of offices in the Fuller building was furnished by my firm or by Mr. Bacot, Sr. When we came to the Commercial Trust Building we fitted up one large room for the Commission and for my use between times. The other three rooms were fitted up with furniture from the former rooms used by my firm, except that in one of the small rooms we purchased a new rug.

When the bills were all in I stated to Mr. Payne that I would pay whatever share of the expense of removal and refitting the Board should see fit. He subsequently stated that the Board would consider it fair if I would pay $97.50, which sum was made up of $22.-50 paid by me for a rug, and the balance, $75 paid to the Board or to Mr. Payne in their behalf. When the Riparian Commission were requested to leave my office early this year the question of the division of the office furniture arose.

The statement of Mr. Payne in reference to my claims and his

confronting me, to my discomfiture with photographs of checks from my check book is a fairy story. The fact is when the matter was first taken up I had iorgotten the amounts that I had paid, remembering only that I had paid some amount. Mr. Payne disputed this and declared that I never had paid one penny. The Board thereupon appointed a commtttee to reconsider the matter and to arrive at some fair settlement.

At the meeting of this committee I produced two checks, one for $75 and the other for $22.50. as I now recollect. The committee then asked me what I wished to do, and I said that I was willing to make any settlement the Board might determine ; that my idea was that the carpet, which was five or six years old and fitted to my room should be left, and that the book cases which held my law library and for which the Commission had no use should also be left, and that the filing case containing my private papers should be left, and that the Commission should take the rest of the new furniture.

The committee and Mr. Payne all pronounced this settlement perfectly fair and acceded to it. Later on Mr. Payne claimed that the filing case had not been included in the arrangement. As to that I stated to the president of the Board that I wished the filing case in any event and for him to report the matter to the Board, and if their understanding was different from mine for the Board to fix a price on the case and I would send a check for the amount. I have never heard from tho Board on this matter.

It is charged that I am receiving money wrongfully in payment for office rent since the Riparian Commission left my office. The facts are that when it became known abroad in the building that the Commission was to leave I had several people apply for the rooms. I put the price at $65 upon the rooms which I could spare and was offered this from two sources. Subsequently the Commission asked me if I could not arrange for them to get some other rooms in the same building. I saw Messrs. Potts & Higgins, who had room suitable for the Commission. They were willing to change, but were only willing to pay me what they were paying, to wit, $50 a month.

I stated to the Commission that those were the only rooms which I could find, and if they chose to pay Potts & Higgins the extra $15 or to pay me that amount, I would rent to Messrs. Potts and Higgins my rooms. This arrangement was carried out. Mr. Payne's part in it was unknown to me and is immaterial from my standpoint. I simply obtained for the rooms through Messrs. Potts & Higgins and the Riparian Commission what I was offered from other sources. This was within my right and was a disposal of my own property at the market price. The committtee could have gone to Trenton, or

sought offices wherever it choose, if the bargain did not seem an advantageous one to make.

MR. RECORD.—Now, in my capacity as a citizen, responding to the general invitation to bring up anything before the Committee, I beg leave to file an affidavit with this Committee, and here is a copy of it, which can be more easily read (handing papers to Senator Wakelee).

THE ATTORNEY-GENERAL.—I do not exactly understand what that paper is which was handed up; if it is part of Mr. Record's testimony I would like to have it read, but if it is not, I do think it ought to be filed.

MR. RECORD.—It is in the hands of the Committee, they can do with it as they please.

SENATOR WAKELEE.—Will you take the witness stand now, Mr. Record.

(Mr. Record then took the witness chair.)

CROSS-EXAMINATION by Attorney-General McCarter.

Q. Mr. Record, the statement which has been read by Mr. Carey was naturally read very rapidly and therefore it was quite difficult for me to entirely comprehend it, but as I listened to its reading I concluded that it was practically a repetition of the statement you made in the public press immediately upon your return from Maine, am I right? A. Well, in so far as I have been able to get copies of the testimony and records from the Riparian office I have corrected it where my memory was at fault, if it was in any respect, but it is substantially the same.

Q. I am, of course, more familiar with the newspaper statement than I am with the written statement which you just had read. I refer to a copy of the Jersey City Evening Journal, dated Saturday, August 11th, and ask you if that statement therein contained is, up to that time and with the information you then had, a correct statement of your point of view in this matter? A. I imagine it was; I have not compared it with my statement, but a statement was sent out, and I presume they got a copy of it, containing my best recollection at that time.

Q. I will take up first the question of your fees. You say in that statement and you also reiterated in the evidence given this morning that the fees you received were for services rendered in each case, as I understand? A. No, I did not say anything of the kind. At least I—

Q. Allow me to read from the statement. A. The position I take in this statement—

Q. One moment, I will give you ample opportunity but I desire to finish my question. A. Let me understand your question in the first place.

Q. I want to know whether you take the position both in the newspaper statement and in the evidence which you have given this morning that these fees of twenty-five dollars and thirty-five dollars and forty-five dollars or fifty dollars a case were paid to you for services rendered. A. For services rendered?

Q. Yes. A. Certainly; oh, certainly. I did not understand your question.

Q. What services rendered? A. The services rendered of examining a title which each applicant was required to submit or file before he could get his application passed.

Q. Do I understand you to now state under oath before this Committee and audience that in every case where a grant has been made while you were counsel of the Board you examined the title? A. That is my best recollection.

Q. And made a certificate? A. I made a certificate sometimes and sometimes I did not.

Q. Why did you make a distinction between those cases in which you did not make a certificate and those in which you did? A. I think when I first began in the old days I used to file a formal certificate. Mr. Payne would present me a certificate amongst the papers and whenever a certificate was filed, was presented, I signed it, and then I think the practice grew up that he would put on my desk a copy of an abstract which he would request the applicant to give and I would go over that abstract, and when I had satisfied myself that the title was right I would say to Mr. Payne, "That is O. K," and put the abstract back upon his desk and he returned it to the applicant.

Q. Then you wish us to understand that you did that in every case? A. So far as my recollection goes.

Q. All these certificates that you signed were in the early days of your services? A. Well, I won't say as to that; whenever a certificate was brought to me I signed it.

Q. Is it not true, as a matter of fact, that you never signed but these certificates which I now hand you (handing papers to witness)? A. I cannot say as to that.

Q. Look at them and see. A. I cannot say as to that; your friend, Payne, has had charge of the records and I cannot say where the certificates have gone. There is no reflection upon me if there is anything absent from the records of that Commission.

Q. I suggest that you confine yourself—you are a lawyer—to the

questions asked, and do not interject anything. A. I shall interject whatever seems to me appropriate.

Q. I want to know if you are aware that the fees which you received in this line between 1897 and 1904 amount to $7,005? A. Not according to my book.

Q. How much do they amount to? A. I had a clerk go over my books from 1893 to the time I left and take out the share that I turned over to Mr. Payne, and during those twelve years—eleven years—I delivered to him $3,500 in round figures. Which would indicate that the total amount of the fees, so far as I have any record of them, in the eleven years was $7,000—a little under, $7,000.

Q. That is just exactly what I was going to ask you, if they did not amount to $7,005? A. Yes; but not for the time you have it seven years; my record shows eleven years; about $350 a year I got in fees according to my record.

Q. In other words you got about seven thousand dollars, and returned half of it to Mr. Payne; that is what you mean, is it not? A. Yes; in eleven years.

Q. I want to know if you are aware of the fact that there were, in all, during this period about 342 grants or leases? A. I have not any idea about that.

Q. I want you— A. I would like to say as to that—

Q. One moment. A. I think this is fair.

Q. I have not finished my question—and that the total number of certificates given by you during all that time amounted to exactly sixteen. A. I do not know whether that is the fact or is not the fact, it is immaterial; I examined the title in each case.

Q. Will you say that abstracts were furnished for the entire number, whatever it was? A. Well, I will say this, sometimes a lawyer would come up there, a reputable lawyer from south Jersey, and he would have a memorandum of the title, and he would sit down and go over it with me, and I would say to him "Will you, personally, certify to me that you have searched that title and that the fee is in the name of the applicant," and sometimes I would take his certificate that that was so, at the bottom of a memorandum in which he would state the deeds.

Q. Now, I understand you to say there were not always abstracts furnished, but sometimes you took the word of the attorney of the applicant? A. The attorney of the applicant would come up and see Mr. Payne; he would either have an abstract or he would say to Mr. Payne "Now, I have got such and such a memorandum, which is practically an abstract, can't I take that up with Mr.

Record," and then he would bring him in and I would sit down with him and go over it; that would happen sometimes.

Q. Are you aware that during your whole time there were only 168 abstracts furnished. A. I know nothing about that.

Q. And there were 174 cases in which no abstracts were furnished at all? A. I know nothing about that. I do know that it was Mr. Payne's duty to see no deed was passed and signed without my having passed on the title; if he did that, that is up to him. I don't know.

Q. But you got your fee all the same? A. He got the fee; I never got the fee.

Q. You never got the fee? A. No.

Q. Was there not, in every case, a check to your order delivered to you and you returned to Payne whatever part of it Payne got? A. Let me explain it.

Q. Is not that a fact? Answer that please. A. I will answer in my own way.

Q. Will you kindly answer whether that was not the fact, that in every case a letter was sent requesting a check to be delivered? A. Sent by whom?

Q. By Mr. Payne. A. Exactly.

Q. Requesting a check sent to your order? A. Yes, sir.

Q. And the check was sent to your order? A. Sent to who?

Q. I don't know. A. Well, hold on.

Q. Delivered to you and endorsed by you? A. Yes, that much.

Q. Then you always got the pay whether you examined the title or not? A. I never got any pay unless I examined the title.

Q. Are you sure of that? A. Unless Mr. Payne put up the certificate on the applicant.

Q. You do know whether you examined the title or not? A. Now, let me explain. What I say is that I never sent out a bill to a man so far as I know. That Mr. Payne and I took those fees by an arrangement that we would carry on the office expenses and pay for the clerks between us. The practice was, as I will show and as I would have shown on cross-examination if I had had a chance—

THE ATTORNEY-GENERAL—I respectfully suggest to the Committee—(interrupted)

WITNESS—I can't help that, I am going to answer this question and make this statement, too.

Q. You don't propose to answer the questions according to law or as a lawyer or a gentleman, is that right? A. I propose to answer the question as I see fit, leaving the public to judge whether I am a gentleman or not.

Q. The Committee, not the public, are in charge of this investigation.

THE ATTORNEY-GENERAL—I respectfully request the Committee to instruct Mr. Record to answer these questions.

SENATOR WAKELEE—Mr. Record has had all the time he desired to read a long statement, and he will be given further time for any statement that he desires to make, but when he submits himself to cross-examination the Committee think that he should answer the questions.

WITNESS—But I ask permission to state the occurrence as it happened.

SENATOR AVIS—In the course of an ordinary trial matters of that kind will come out on rebuttal.

MR. RECORD—Why not let it come in now?

SENATOR AVIS—Because the Attorney-General is entitled to answer the question.

MR. RECORD—I have answered it, I said "yes." Now, this is what I want to say, and this is in the interest of fair play for everybody.

SENATOR AVIS—You can make any statement you want to.

WITNESS.—I say the practice between us was this : An applicant would appear ; he would present his application, some times in writing when he appeared, and some times weeks afterwards ; he would go before the Board if he chose and the title would be requested, either verbally or in a letter by Mr. Payne, and when everything was finished Mr. Payne would write a letter, and if you will produce the Riparian Commission's letter book, you will find hundreds of them, in which he would say "Your grant has been executed" or "Your lease ; you will please send two checks, one to the order of the state treasurer for so much money (being the amount mentioned in the deed) and the other to the order of George L. Record for———" whatever amount it was, running from ten dollars to fifty dollars. That fee was fixed by Mr. Payne, seldom by any consultation with me, and if it went up above twenty-five dollars he would say to me "I think under the circumstances of this case that we are entitled to a little more," and he would put in the bill, the stenographer would make it out from his dictation, and it went in an official envelope from the Riparian Commission office, openly and above board, to the client, to the applicant ; the applicant sent back the check and I signed the receipt for it and gave it back to Mr. Payne to return the receipt to the applicant, and I endorsed the check and put it in my bank account, and then, whenever Mr. Payne appeared, which he did, once in every month or two, as shown by this state-

ment (referring to statement of fees and money paid to Mr. Payne, which witness heretofore said was taken from his own books) and asked for a sum of money which he said was one-half of the fees up to date for examining titles, I gave him whatever check he said. That was the practice.

Q. Now I want to know whether you are aware of the fact that out of the three hundred and forty-two cases that were passed during your term as counsel, in 174 of them no abstracts were furnished whatever? A. I am aware of no details of that kind. I am aware that every time a grant was put up to me to examine the title I examined it.

Q. You said in your newspaper statement—(interrupted) A. It was the duty of the Secretary, mind you, to put the titles up to me, and when he did it I examined them.

Q. But you took the fee, anyway? A. Why, certainly.

Q. Yes? A. I assumed he was not a common swindler.

Q. Certainly not, but you were willing to take the fee? A. Why, certainly.

Q. Will you say you always examined the title, will you swear—(interrupted) A. I say I examined every title that was brought to my attention by the clerk of the Board; that is all I swear to.

Q. That is all you swear to? A. I don't know but that grants have gotten through that I never heard of; I knew nothing about that. My duty was to examine titles the Board put up to me and I examined every one that was put up to me.

Q. But you received checks day after day from Mr. A or Mr. B or Mr. C, and put them in your bank account without regard to the question whether you had or had not examined the title, is that right? A. That is an unfair—

Q. And then sent half of the check to Mr. Payne? A. That is an unfair question.

Q. Is not that the fact? A. I have received whatever checks Mr. Payne has collected and turned over to me, that is all I can say.

Q. How many grants on an average a day or a week or a month, do you suppose came under your surveillance? A. As far as I could judge from this account they would average—they would go some times one a month, some times there would not be any for two months and then there would be three or four in a month.

Q. So that they certainly were not so frequent but that you would know whether or not the fee that you received represented an examination, would you not? A. Why, it is impossible to answer a question like that; a check was turned over to me by Mr. Payne and

I banked it, I assumed that represented an application ; it might be a month after I had passed on the title, I could not remember it; sometimes they were held up, sometimes I would examine a title and somebody would be away and we could not got the thing signed ; or some question came up ; I could not keep any track of those checks of ten or twenty dollars apiece.

BY SENATOR AVIS.

Q. Did you make it a habit to attend or not to attend the meetings of the Riparian Commission? A. I think I went to every meeting that was held during my time except, possibly, one.

Q. Then you attended all the meetings excepting one during the period that you were counsel. A. I should think so now; that might not be quite accurate.

Q. All but a few at any rate? A. I was practically always there, yes.

Q. So that you knew practically all claims that were passed upon by the Riparian Commission during that period—they passed upon them at meetings, didn't they? A. Well, they made so many grants ; they would come up ; and they discussed this price and that price and made a price on it and the details passed through to Mr Payne's hands.

Q. But the grants or leases were always made in open meeting by the Commission? A. Yes, the resolution to grant at a price was always at a regular meeting.

Q. So that you were aware, from the fact that you attended these meetings? of the number of grants and of the names of the grantees? A. In a general way ; I never carried it in my mind.

BY SENATOR MINTURN.

Q. What was the reason for dividing half the fees with Payne? A. The reason was that when we first started in, as I now remember, we had two clerks over in the Fuller building ; one was a fellow by the name of Sanderson, who came over there when Bacot and I formed a partnership ; then we got a stenographer, and then Mr. Bacot, Senior, began to get along in years and they called on Mr. Payne to do considerable of his work, as I now remember ; and then Mr. Payne, instead of copying these grants in a book, which is a very tedious process—it is a public record office and you have to copy everything in long hand as you do a deed, would use Sanderson or this stenographer, and as the typewriter came in at that time they would use my stenographer and my typewriting machine, which was mine—or Mr. Bacot's and mine—in the transaction of the business of that office. Little by little they began to use our clerks. Mr. Payne came to me and he said "I will chip in," at one

time, I don't remember exactly when this was—"I will chip in twenty-five dollars and we will carry the expenses of this between us." I don't know whether he contributed anything towards Sanderson's salary or not. We paid Sanderson fifteen dollars a week and the stenographer fifty dollars a month when we began, and so the expenses were paid of those clerks who did the routine business of the Commission, that is, copied the records, sent out the letters, attended to the office and answered the telephone and represented the office, and that seemed to me a fair arrangement, and so we paid the bills between us and went along on that basis.

Q. Was that arrangement submitted to the Board? A. That I don't know ; I made that either with Mr. Bacot or with Mr. Payne, I have now forgotten which ; that is, Mr. Bacot, Sr. It was their duty to submit it to the Board; I don't know whether they did or not.

FURTHER CROSS EXAMINATION.

Q. I notice from your statement, and you have sworn that the statement is true, that you say "The fees were paid to me by an arrangement with the Board," is that accurate? A. You do not read it all.

Q. Now, Mr. Record, I want you to distinctly understand I am garbling nothing. (Handing paper to witness.) See what I garbel there, read the statement and see if you do not say in so many words that the fees were paid you by an arrangement with the Board, and then read the sentence before and the sentence after and see if I have left anything out? A. You have left out a column and a half.

SENATOR WAKELEE.—That was not said.

MR. RECORD.—I said that I included that, and filed it.

Q. I want to know whether that is accurate, that these fees were paid by an arrangement with the Board? A. I understood they were.

Q. What? A. To the best of my knowledge I understood they were.

Q. You attended every meeting of the Board? A. I did not. I did not attend their secret and finance meetings.

Q. Your salary was fixed by the Board? A. Yes, sir.

Q. And the amount was fixed by the Board? A. So I understood, I never heard them fix it.

Q. Do you mean to say you have attended every meeting of the Board and receive as high as a thousand dollars in fees a year that you divided with the secretary and yet never called their attention to it—and supposed they knew about it. A. Certainly. I dealt with the recognized agent of the Board.

Q. Why didn't you deal with the Board? A. I thought I was.

Q. Why did you think so? A. Because those things were sent out officially and passed through officially.

Q. What do you mean by that, what things passed through officially? A. Take, for instance, Governor Werts and Governor Voorhees, they both appeared before the Board before they left and paid fees.

Q. I am not speaking of ex-members of the Board. A. My statement, accurately, is that I never had any conversation with members of the Board, that I now recollect, about fees at all; I made my arrangements with either Mr. Bacot or Mr. Payne and I carried it on that way openly. Every year and sometimes oftener they had a session and went over their financial matters, at which I was not present.

BY SENATOR AVIS.

Q. Why did you charge fees at all when you were on a salary of fifteen hundred dollars a year? A. For the reason—that is very easily explained—for the reason that I was not employed by the Board alone on account of the titles, but little by little, as my office adjoined them, they would call me in on matters that came up and for which they could not get any pay out of the applicant.

Q. Now, right there—(interrupted) A. One moment—and they used to send to the Attorney General for expressions of opinion; they found that cumbersome and they, therefore, decided, along about 1893, or thereabouts, to retain me to attend the sessions of the Board and to give such legal advice as I might give, or might be called upon for, and my understanding was that my salary was for services that I rendered to the Board, and my fees were for services that I rendered to the applicant.

Q. That was your understanding, you say? A. Yes, sir.

Q. Did you ever, at any time, submit to the Riparian Commission the question of charging the fees? A. Not that I recollect.

Q. Did you know of any legislative authority which allowed or permitted the Riparian Commission to charge a fee to an applicant for a riparian grant. A. Yes, I think the Riparian Act is broad enough for that.

Q. What portion of it? A. It says they may make grants on such conditions as they see fit.

Q. And you think the term "upon such conditions as they see fit" gives the general counsel for the Riparian Commission the power to charge an individual a fee for examining a title? A. That is my opinion; it was certainly done for many years before I went in there.

Just permit me, while on this subject, to say this, which you ought to understand: In the old days we had this arrangement: Mr. Vredenburg was counsel in Hudson County, John S. Applegate was counsel in Monmouth county, and we had our local counsel in every county where there was any riparian land, and those gentlemen, by a perfectly well understood arrangement, used to act as men to get business, that is to say it was to their interest to get riparian grants, and they would come up before the Commission themselves and act in a dual capacity, as counsel to the Commission on the question of title and as counsel to individual applicants on other matters, and they would charge a fee to them, and that practice I inherited; you must remember I commenced on a fee basis before I went on a salary basis.

Q. But when you were put on a salary basis the idea of the Commission was to get away from the fees? A. I don't think so.

Q. Did they ever intimate to you that fees should be charged as theretofore? A. I have no recollection of talking on the fee question with any member of the Board.

FURTHER CROSS EXAMINATION.

Q. Why not, why didn't you do that—can't you tell us why? A. Why I never did do it?

Q. Yes. You knew them intimately. A. I did not see that I was called upon to do it; I supposed they knew that as a part of their records.

Q. What records? A. The letter book of the Commission.

Q. Do you suppose the members of the Riparian Commission, coming there from all over the State, read the letter book that Mr. Payne kept in the office? A. Well, I suppose that the Board trusted their engineer and secretary in financial matters and that they had a right to suppose that he would keep no transaction in the office secret, and they relied upon him. I certainly assumed that he would tell them everything openly, and relied upon him.

Q. Why didn't you tell them yourself? A. I was not called upon to.

Q. But you assumed that he was; why should he be? A. Because it was his business to do it and not mine.

BY SENATOR AVIS.

Q. What did you pay Payne half of those fees for? A. When he began to contribute to the expenses of the office.

Q. When he began to contribute to the expenses of the office, as I understand it, he was getting value received from the use of your

stenographer and the other clerk in your office. A. Yes, the Commission was.

Q. Well, he, as its secretary? A. Yes, sir.

Q. Why should you then divide your fees with him for something he did not do, that is what I am trying to find out; what did he do for his share of the fee? A. Let me explain that to you.

Q. Yes, let's find out. A. This arrangement was in, my opinion, as far as I can now recollect, it was a combination arrangement of this kind—we had four rooms, three of those rooms were used by the Commission, and finally when we got to the Commercial Trust Company building, four rooms were used by them. If Mr. Payne was away on any private business of his own or on the official business of the Commission, which would often happen, I would act as clerk of the Board–that is to say, a man would come in and I would get the records out, I would get the maps out, and I would show him what things would cost; I acted in Mr. Payne's place; when I was away Mr. Payne, I assume, did what he could in my private business; that is, if somebody came in he told them when I would get back; if the telephone bell rang and the stenographer was not there, he answered it, if he was out, and the stenographer too, and there was a telephone message for him, I made a memorandum of it. And then they got to using the clerks in the office, and then Payne began to contribute, and then we agreed to divide the thing and carry it between us. Now it was a general all around arrangement in which everything was taken into account, and for which value was rendered every time as far as I knew it.

Q. You mean you rendered value to whom? A. To whoever paid the money.

Q. You did not consider you were retained by the people who paid the money or that this money was paid to you for services rendered to the applicant? A. Yes. I did.

Q. You consider then— A. Why that was the practice, the Board relied upon me to make the title for the application straight; that was my business.

Q. You were employed by the Commission to see that the title was clear, were you not? Q. I was not employed on that primarily; I was employed on other business, as I understood it.

Q. Then you consider that— A. I considered that I had an arrangement with the Board, I considered that I was paid fifteen hundred dollars a year plus the fees for which I was to render whatever services the Board asked me to and give opinions and discuss matters at meetings, and I was to examine the titles and carry on the office force.

Q. You were examining the title for the applicant, were you? A. I was examining the title for the applicant in one sense, that is to say, it was understood we would not pass a title unless some lawyer passed on it; it was the applicant's place to foot that bill.

Q. When Mr. Payne sent word to the applicant I understood that he notified him that the state treasurer should be sent a check for so much, which was the amount of the lease or grant, and that a bill was sent for the amount of the fee? A. That is right.

Q. And that was sent to the applicant before the lease or grant was sent to him? A. Yes, sir.

Q. He had to send in checks for both of those bills? A. That is right.

Q. Before he got his lease or grant? A. That is right.

Q. In other words he had to pay this fee before he could get the lease or grant? A. That is right.

FURTHER CROSS EXAMINATION.

Q. And whatever certificates you signed certified as follows:

"To the Riparian Commissioners of the State of New Jersey: Gentlemen: This will certify that I have examined the title of Samuel B. Norcross to the land described in his application dated March 24, 1897 and situated at Lumberton, in the county of Burlington and State of New Jersey, fronting on the tidal waters of Rancocas Creek, and report that the said applicant is seized of a good estate in fee simple to the premises in question and that a grant or lease of the lands under water in front of the same can properly be made to said applicant.

Respectfully submitted,

GEORGE L. RECORD,

Counsel."

Now will you swear that you signed twenty-five of those? A. I will not swear to anything about that.

Q. And you did not sign any more than these (handing witness bundle of papers) did you? A. I don't know, I was there eleven years.

Q. Why didn't you certify to every title? A. I certified to every title put up to me either in writing or verbally. I either signed a certificate or told Mr. Payne the title was all right.

Q. And that is true of every title granted to Colonel Fuller's clients, is it? A. That is true of every title that was brought to my attention.

Q. That is true then of every title granted to Colonel Fuller's

clients? A. I don't know anything about Colonel Fuller's clients.

Q. You won't answer that question specifically? A. I will say to the best of my belief; of course I am only testifying from custom now, I do not remember individual cases.

Q. I call your attention to the fact that on March 16th, 1893, in minute book five, page one hundred, the following appears: "On motion George L. Record was unanimously appointed to act for attorney for the Board for cases in said counties." A. What is the date of that?

Q. March 30th, 1891, it is, but the preceding paragraph should be read in order to show what is meant by "said counties," that reads as follows: "A letter was presented from J. B. Vredenburg, heretofore acting as attorney of the Board in riparian cases, in the counties of Hudson and Bergen, declining to act as such attorney by reason of other engagements, which was received and accepted." It therefore appears that you were then appointed counsel for Hudson and Bergen counties? A. I should say that was true; I had forgotten that.

Q. It further appears that you were subsequently appointed—the time I will have in a minute, I can't lay my hands on the place at present—you were subsequently appointed general counsel of the Board. Is it not within your knowledge that previous to the appointment of general counsel and while you were counsel for Bergen and Hudson counties that you, like other special counsel received fees for examining the title, so called? A. I presume so.

Q. You did, did you not? A. Well, I presume so; I cannot swear to it.

Q. Well, how did you get your fees? A. I presume so, if I was counsel in the counties; I presume so, if any grants were made in those counties.

Q. I call your attention to the fact that on page 198 of the minute book the following appears: "On motion George L. Record, Esquire, was appointed General Counsel to the Commission until otherwise ordered, to examine and report upon such matters as may be referred to him from time to time by the Board, his compensation for such services to be hereafter fixed." That is at the meeting of March 16th, 1893; so that it appears that on the 16th of March, 1893, you were appointed General Counsel to the Board to report upon such matters as might be referred to you from time to time by the Board. Was not the principal thing referred to you, before the Board made a grant, the question as to whether or not the applicant was what he represented himself to be? A. I think not; I do not think that is why I was employed at all.

Q. Do you think the minutes accurately express your employment? A. I think the minutes express whatever it does express.

Q. Does it accurately express your duties? A. I should think it very inaccurately expresses it.

Q. I want to know if one of the most important things referred to you by the Board was not the question of whether the applicant for a grant was what he claimed to be and whether, theoretically, until you certified that he was, they would not permit the grant to be delivered, and whether he did not have to give a check to you and a check to the State Treasurer for the amount of the grant before that grant would be delivered? A. That is right.

Q. Now, I call your attention to the fact that your salary was subsequently fixed at a meeting held on the 26th of October, 1893, on page 220 of the minute book, as follows: "The salary of the genral counsel was on motion fixed at $1,500 per annum from the date of his appointment, March 16th, 1893," do you recollect that? A. I would not recollect it, I presume that was so; I remember there was a time when I did not get any salary, there was a transition stage there when I had been appointed and did not get paid until later.

Q. But you subsequently got it? A. I imagine so.

Q. So that from March, 1893, you were having a salary of $1,500 for your position as general counsel, the duties of which position were defined to be "To examine and report upon such matters as may be referred to him from time to time by the Board." Were you aware that the Board published reports annually? A. I was.

Q. You knew of yourself, and your experience in such matters was such as to lead you to believe that when the Board had its several special counsel these counsel got their fees for examining the papers and got no salary? A. Surely.

Q. You got no salary as special counsel? A. No, sir.

Q. Any compensation you got was from your fees in special cases? A. Yes, sir.

Q. I call your attention to the fact that on page 43 of the annual report of the Commissioners, which you recognized as such—(showing printed pamphlet to witness) A. Yes.

Q. Appears the following: "Directions for making applications to the Riparian Commission for a grant in fee or for a lease or for a license to dig and remove sand from land under tidal waters of this state, the fifth of which reads as follow's: 'The applicant or his attorney having received from the Secretary of the Commission, notice of the action of the Commission and the price fixed for the grant or the principal sum of the lease shall within ten days notify the secretary of the Commission of his acceptance of the terms so fixed

and shall pay the sum of fifty dollars on account for the expenses of the Commission in preparing the said grant or lease' ". Do you remember seeing that in there? A. I do not remember it now.

Q. Was your attention ever directed to the fact that after you had been made general counsel, and for the first time, a salary was fixed of fifteen hundred dollars for your legal services, that that fifth clause was omitted from the report and that in the report for the year ending 1893, the same year that you were appointed general counsel, the provision, numbered fifth, that the attorney should be given fifty dollars for the examination of title, was omitted. A. That was entirely new to me.

Q. Did you ever read these annual reports? A. I don't believe I ever looked at one of them.

Q. You never looked at one of them? A. Excepting on the legal side; I drew some parts of them that had to do with the legal end.

Q. If you had happened to read that you might have thought there was not much in your idea that the Commission, in some way or other, learned of the fact—(interrupted) A. You miss the whole point entirely—that I furnished the clerks for this office, and if I had not furnished them the Commission would have had to get the money from the state to furnish them and that this fee, which they had always paid was continued in that way and used in that way. That is the point and substance of it.

Q. Did the clerk or female typewriter examine the title? A. No, the typewriter wrote the letters and copied the deeds into the books and I paid for it, and that was all Riparian work.

BY SENATOR WAKELEE.

Q. Did you pay all the salaries of the operators? A. We divided it between us.

FURTHER CROSS EXAMINATION.

Q. In what proportion? A. My recollection is that Mr. Payne paid twenty-five dollars towards the stenographer, that was half, and I paid Sanderson sixty dollars a month and he contributed nothing towards that, but he may have contributed towards that, that has gone out of my mind. My point is that between us, between Payne and I, we paid the money which the state otherwise would have had to pay.

BY SENATOR AVIS.

Q. You considered you had the right to collect from applicants that money which was not authorized by statute or by a rule of the Board, for the purpose of saving the State money. A. The point I

am getting at is not whether I had the right or not, what I want to get before the Committee and the public is that I footed the bills; subsequently by the help of Mr. Payne, I footed the bills for copying the deeds into the State records.

Q. Did you ever—(interrupted) A. And that—now wait a minute.

Q. Pardon me; go ahead. A. And that I paid those bills; if I had not paid them the state would have had to devise some means to pay them ; that the fee business and the salary business and the rent and the telephone were all jumbled up together and made a bargain between us. Now, whether that was legal or illegal is a question for you people. I think it was legal, and I did it openly, and it was fair and to the advantage of every one. That is my position.

Q. Mr. Payne and the Riparian Commission, as I understand you, paid their share of all these charges, to your satisfaction, that is true, is it not? A. What is that?

Q. Mr. Payne and the Riparian Commission paid their share of all these charges to your satisfaction. A. Why, this bargain was to my satisfaction.

Q. Yes, you so testified, I think ; you never complained to the Riparian Commission that they were paying your share of the salaries of these employees? A. Certainly I did, through the medium of the recognized agent, their clerk.

Q. Did they authorize it? A. Certainly ; this bargain grew out of that situation. I don't remember the date.

Q. I don't care anything about what you or the Riparian Commission did, what I want to find out is whether you felt that you and the Riparian Commission were justified in collecting from applicants for riparian rights fees not authorized by law and not authorized by the rules of the Commission, for the purpose of saving the State money? A. I absolutely do. But I dispute your question, beyond that ; I say they were authorized by law, they were within the powers of the Board, and it was a proper way to conduct the business ; nobody was swindled and everybody got value received. It was the business of the State to ascertain from every applicant that he was the owner and that was a proper charge against him.

Q. Will you show us or bring to our attention any action of the Riparian Commission after 1893, after you were appointed general counsel which would show that the Riparian Commission themselves, under the law, as you say, imposed that charge upon the applicant? A. We will find that all out when we get the Commission on the stand ; it will all come out ; they will have to show what they

knew about it ; all I know is about my part of it, which was open and above board and was just.

FURTHER CROSS EXAMINATION.

Q. It was so open that you never spoke to a member of the Commission about it? A. I never spoke to a member of the Commission about the fact that I drew my salary every month.

Q. The salary had been fixed in the minutes, had it not? A. I presume so ; I never saw the minutes.

Q. You never spoke to the Commission about your being paid. A. I very likely did, for all I know.

Q. Did you? A. I have no recollection about it.

Q. You say you very likely did, will you say you think you did? A. I can say nothing about that, I have no recollection. I have no reason to conceal it.

Q. You stated a minute ago that you had paid the bills; what bills did you pay when you referred to it a moment ago, when you said you had paid the bills. A. What?

Q. Which justified you in taking these fees? A. I did not so state. You misquote me, and must quote me right; I say this was a part of the general arrangement—bills were in it, the fact that I took Mr. Payne's place when he was away was in it, the fact that I was counsel for the Board was in it, the rent was in it, the whole thing was in it.

Q. You paid a man named Sanderson $60 a month? A. That is, my firm did ; I paid the stenographer fifty dollars a month and Mr. Payne contributed towards that, I have forgotten how much; I remember fifty dollars at one time.

Q. Is it not a fact that every other special counsel, including yourself, before the appointment of general counsel without regard to rent or clerk hire or anything else got fees for examining the papers? A. Assuredly they did.

Q. And you got those fees? A. Yes, sir.

Q. And Mr. Vredenburg got them before you? A. Yes, sir.

Q. And Applegate and Hope got them in Monmouth county? A. Yes, sir.

Q. And after you were appointed general counsel and received a salary you continued to get the same fee? A. Yes, sir.

Q. Without regard to rent or anything else? A. The whole business was taken together.

Q. What change had taken place? A. You are assuming there was a sharp employment ; there was not. The minutes show in the first place just exactly what happened ; I began to do work for the

Commission without any pay outside of the searches; they would call on me on questions that arose and would say, "What do you think about this, we do not want to go down to the Attorney-General," and I would decide it for them, and after a while somebody suggested, I think it was Governor Werts, "You ought to be paid for this, we ought to have special counsel, we ought not be obliged to go to Trenton when these things come up, we need somebody to advise us at once." And that grew into the general counselship. There was never any sharp employment as you try to bring out. I never read the minutes and don't know what they state about my employment.

Q. Your office was right there with the Commission, in the same building? A. The same building and the same room.

Q. So much for the fees. Have you stated all you want to about them? A. I think so.

Q. I bring to your attention the fact that I propose to show before this Committee rises ultimately, and I will give you full opportunity to answer it in any way that you want to hereafter, that as a matter of fact during your term of service as counsel for this Board there were three hundred and forty-two cases in which fees were received by you and divided with Payne on an average of forty-dollars apiece; of these cases the total number of certificates of title given by you as counsel are just fourteen; of these cases the number of cases in which abstracts of title were furnished were 168, and of these cases 174 were given without any abstract being presented whatever; that the number of twenty-five dollars fees charged was only ninety-three, that some were forty and fifty dollars and that the amount which you drew from the state, including this sum and the salary from 1897 to 1904, was $17,505. A. Including my salary?

Q. Yes. I will now pass to the Navesink railroad. A. You said including my salary?

Q. Including your salary. A. Yes, sir.

Q. Before passing to the Navesink railroad matter, though, I will ask you what you thought your salary was for? A. I thought my salary was for the advise which I gave to the Commission and my attendance upon it, and that, with the fees and the whole business constituted an arrangement between us whereby I rendered certain services and got certain money and that was part of the bill.

Q. The bill? A. The bargain, if you prefer that.

Q. You do not mean to have what you call the public, understand that that arrangement was made with the Commission, that you were to get those fees? A. Certainly I do.

Q. What? A. Certainly—(interrupted).

Q. Now, one minute. A. Let us define our terms. I say that I made that bargain with the Board; I made it with their recognized agent who had the power to make it; that is what I say.

Q. Did you make your arrangement for $1,500 a year salary with the agent of the Board? A. Certainly not.

Q. Why not? A. Because that was made by the Board direct.

Q. That is all that you have to say about that? A. Well, that is all that I say now.

Q. Now, to return to the Navesink railroad— A. I wish, in summarizing this thing for the Commission to understand this. I want the books produced here; I want you to go through them from 1893 and to look at these records and to ascertain in whose handwriting they were and then it will be found out who paid the weekly bills for all that work; go over the letter books, look at the typewriting; find out whose was the typewriter on which the work was done, who paid the typewriter, who footed the weekly and monthly bills; that is your point.

BY SENATOR WAKELEE.

Q. You say you paid a proportion? A. I paid an agreed-upon portion.

BY SENATOR AVIS.

Q. Which was satisfactory to you? A. Yes, sir.

Q. Then why should we inquire into that? A. I don't know why in the world you are inquiring into it anyway, excepting what the public infers that what you are trying to do is to prove that I took an illegal fee and I will go into Court and answer that.

Q. You don't think the State of New Jersey was relying upon you to pay its bills, do you? A. I did; I was paying them; but I don't care whether they were relying on me or not, I was footing the bills for doing the work of the Riparian Commission.

FURTHER CROSS EXAMINATION.

Q. The stenographers and clerks did your individual work, didn't they? A. That is right, but I got eighteen hundred and odd dollars a year, for that I acted as counsel for the Commission and went all over the State for that Commission, started at the inception of difficulties and carried them through and gave opinions and verbal advice, legal advice, went to Trenton and to Washington on some matters that came up from time to time, footed the bills or a portion of them in the office, answered the telephone when Mr. Payne was absent, took his position when he was away on his private business

and public business and took charge of the Commission's business in the absence of their regular help, and for that I got $1,800 a year all told. That, to my mind settles my moral relation to them. If the technical relation is not sound I am not concerned with that this day.

Q. You did not think that was enough so you thought you would add on the quiet a little to it and rely on the secretary of the Commission to tell the Commission the way you were getting it on the quiet? A. Absolutely there is no warrant for any such inference, and that is a gratuitous insult. We will let the record speak for itself. You cannot find in the course of my record any opinions given in the matter in which my relatives have millions at stake, either.

Q. Speaking of that little matter to which you just referred I think perhaps the Supreme Court is with me just at present on that. A. The Supreme Court will never be with you nor will the public ever be with you on that little matter.

Q. I want to turn to this Navesink grant, will you please look at these papers (handing papers to witness) and tell me if they are the applications which were prepared for the Navesink railroad. A. The papers are whatever they are, I don't know.

Q. Won't you look at them and see? A. Well, whatever they are, they are ; I have no recollection of them.

Q. Look at them and see ; are they not all endorsed in your handwriting? A. Very likely.

Q. Well, are they? A. Part of them are in my handwriting, and part in that of Mr. Bacot, Sr.

Q. If they are, part of them, in your handwriting you had something to do with them? A. I had openly to do with them.

Q. Then you recognize them as being the applications for the Navesink railroad, do you? A. Yes, certainly; I do not remember them, I presume they were put in.

Q. Do not equivocate about it, look at them? A. I do not equivocate.

Q. What are they? A. One of them has at the top the figure 122 and also "20", which I do not recognize.

Q. I do not care about that. A. What do you want?

Q. I want to know what those papers are. A. Number one appears to be the application of the Navesink railroad for a grant of license, both are written on, for land under water on Raritan Bay, dated, November 27, 1891.

Q. That is a matter in which you were employed and the scheme of which you evolved, is that right? A. It is a matter in which I

was employed and the idea came out of my mind, as I now remember it.

Q. And you were retained to put it through the Commission? A. I was not.

Q. Didn't you say so in your published statement? A. I was retained, as I remember it, by Mr. DeForest who sent for me to come to New York and who said that they wished to transfer their railroad from Sandy Hook to the Atlantic Highlands shore and that they were in difficulty in order to do it quickly, having been warned off, and they wished to get it done before the summer season set in and asked me if I knew any way in which that could be done under the Riparian act, and I studied the question out and told them that I thought it might hold under the thirty-sixth section of the general railroad act.

Q. Were you or were you not retained to put the matter through, that is what I want to know? A. Well, I should say so. I was retained, generally in that matter, and I did whatever I could to help put it through the Commission so far as arguments went and any reasonable thing that I could do.

Q. Is the signature of Leon Abbott, Jr., on these papers in your handwriting? A. It may be.

Q. Is it not? A. It looks like it.

Q. Why, if that paper was prepared under your directions and endorsed by you and you were the attorney in the matter, did you have the name of Leon Abbott, Jr., endorsed upon it as attorney, was it not because at that time you were the local attorney of the Board? A. Absolutely not.

Q. Why, then, did you do it? A. My recollection is that Abbott was the attorney.

Q. But you have just said that you were the attorney. A. No, I did not, either, I said I was one of the attorneys; in my statement I say I was one of the attorneys; my impression is that Abbott was what you would call the attorney of record.

Q. He did not sign his name, did he? A. That I do not know.

Q. He did not appear before the Board? A. Absolutely he did, assuredly he did.

Q. Are you sure of that? A. Why, certainly.

Q. Did you see him there? A. Why, certainly I did; you get the members of the Board present and they will tell you so.

Q. We will have them; we expect to have them all. A. He appeared and made the argument, I did not. I sat there but did not say anything.

Q. If you were representing them why didn't you make the argu-

ment, you evolved the scheme? A. Because I was not retained to make the argument.

Q. You were not? A. No, I was under the direction of New York counsel and I did whatever they told me to do.

Now, gentlemen of the Committee, I wish—

Q. Wait a moment. A. You wait a moment for me.

I am perfectly willing to answer any questions of any kind; what I call the attention of the Committee to is this that this is a matter which took place fifteen or sixteen years ago; no object is stated here for going into this transaction, my part in it is perfectly open, no one complains of it—what is the object of this, what are you driving at?

SENATOR WAKELEE.—The object of this investigation is to find out the methods established by the Riparian Commission in conducting its affairs; we want to find out the methods of the Board in making these grants.

Q. Reading from the published report of your statement, I have it as follows: "As to the charge in reference to the railroad right of way over riparian lands without notice to land owners, the newspaper reports of the testimony are conflicting on this subject. Reference is made in one report in the case of the railroad at Sandy Hook. I was retained in this matter by the Central railroad prior to my having any official connections with the Riparian Commission and I evolved for them the plan shifting their railroad from Sandy Hook to the Atlantic Highlands side of the bay. An application was made to the Riparian Commissioners who referred the matter to the then Attorney-General, John P. Stockton. He advised the Board that such a grant could legally be made, and it was made. My recollection is that this matter was open and proper from every point of view," do you recall that? A. Yes, sir.

Q. Do you now deny that you were retained to put this scheme through which you say you evolved? A. Well, I deny those things put in that way; I say I was retained—

Q. I am using your language. A. I was retained by the people in New York in the first place to evolve some method by which this could be done, I then said to them "You will have to go before the Riparian Commission, it will probably be referred to the Attorney-General, it will have to be debated and argued out." My recollection is that we had several talks with the Attorney-General, that I went to Trenton on behalf of the railroad company and discussed the question at length with the Attorney-General; my recollection is that he attended a meeting and that he and Governor Abbot and myself and three or four others sat there and debated it a long

while and finally a conclusion was reached. That is my recollection, but it was some seventeen years ago and I cannot be positive.

Q. You observe you are not answering my question. I want to know how it was you came to employ Leon Abbott, Jr., the Governor's son and private secretary, to represent the railroad company when you were the attorney of the railroad company. A. If I had anything to do with it I did it under the directions of the counsel in New York who told me to do it.

Q. Did you direct that notices be sent out of a meeting to be held two days after at nine o'clock in the morning to the people living along the shore front at Navesink? A. I had entirely forgotten any such detail as that.

Q. Did you ever know of any other meeting being held at nine o'clock in the morning? A. I don't know of that meeting being held at nine o'clock in the morning.

Q. You were present, were you not? A. That, I cannot say.

Q. Do you know why the grant was executed on the very day that it was decided to be given? A. No, I don't remember anything about those details.

Q. Do you know that the record does not show the Attorney-General was present on the day the grant was made? A. I don't know anything about that, I have not seen the record.

Q. You said in the opening, in your direct evidence to-day that you have not been permitted to see some of the minutes. A. I did not say that, I said we have not been able to get some of the minutes, they were not there, or were before this Committee or something like that; some information my representative could not get; and I understand that the minutes of that meeting have not been seen.

Q. Mr. Bacot was the secretary of the Board at that time, was he not? A. Yes, sir.

Q. Was it not customary for him to witness the grants which were made at that time? A. It was if they were completed in the building; if they were taken away they were executed in the presence of anybody that could be got.

Q. Are you aware that Leon Abbott, Jr., witnessed that grant? A. I am not.

Q. No? A. It was entirely proper if he did.

Q. I did not ask you that. Who were the attorneys for Monmouth county at that time? A. What do you mean, who were the attorneys?

Q. The special attorneys of the Riparian Commission? A. I imagine Applegate was.

Q. And you were the attorney of the Commission for Hudson and Bergen counties? A. So it seems.

Q. Did you think that the retainer, being limited to Hudson and Bergen counties, enabled you to take a retainer in opposition of the grants of the rights of the Commission? A. How is that?

Q. Did you think that the special character of your retainer enabled you to occupy a position of quasi and legal hostilities to the Board on some other matter? A. Why, certainly, if I did it openly.

Q. Openly, by having Leon Abbott appear as attorney of record? A. I say that I appeared.

Q. You said a moment ago that he appeared and did all the work. A. I say I sat there openly as counsel, and I talked with the Attorney-General as counsel.

Q. Who did appear, Abbott or you? A. I presume both of us did.

Q. Did the Board know you represented the Central Railroad Company? A. Absolutely they did.

Q. Yes? A. Why, certainly.

Q. Can you give any reason to this Commission why, if that is so, you personally endorsed Leon Abbott's name on the outside of the application? A. Why the applications, Mr. Attorney-General, are the merest forms in that office, anybody draws them up, anybody endorses them, they are not anything that amounts to a snap of the finger, they are embodied in the grant and disappear and it is utterly immaterial who signs or endorses them.

Q. They are very important paper, you cannot get a grant without application? A. Yes, but after you get the grant the application disappears, I have known grants to be made over and over again for which no application has been made and then put on after the grant went through.

Q. Was that done with your sanction? A. It was done with my sanction because the grants were not delivered until the application was finally filed, but all the business went through. Sometimes in open meeting they would say to a man that he had better make the application so and so and he would say "Well, I will file it," and they would state that they would fix the price so and so and he would file it.

BY SENATOR MINTURN.

Q. Those grants are not made on any formal application? A. They are supposed to be but it is recognized that the formal application is a thing that can be filed at any time up to the time the grant is made; that is, if you come in today and bring an application in the name of somebody and it appears during the discussion that the title is really in somebody else's name they say to you "We

will fix the price at so and so and you put in a proper application in the proper name, later." That is my point, that the application does not have to be there before the Board will arrive at its deter mination. Before the grant is made, of course, there is an application filed.

Q. Is that sworn to? A. No, I don't think so; maybe it is, I have forgotten about it; I think not. I think it is a mere preliminary pleading, don't you know, to start the record. These deeds refer to the fact that so and so has applied and sets up that he is the riparian owner, etc.

FURTHER CROSS EXAMINATION.

Q. Had you ever heard of an application similar to that of the Navesink railroad being either made or granted prior to your evolution of it, as you style it in the newspapers? A. As I now recollect, no; it is possible that idea might have come from somebody else.

Q. It was somewhat novel? A. I thought so.

Q. You are, of course, familiar with the thirty-sixth section of the railroad law under which you justified the application you made to the Board? A. Yes, sir.

Q. And you were of the bona fide opinion at that time that it covered the case of the Navesink railroad? A. I thought it was sound, yes.

Q. You were quite accustomed to get written opinions from the several Attorney-Generals, were you not? A. I had no custom in it whatsoever; I was then new to the Board comparatively, and I had no custom as to Attorney-Generals or anything else.

Q. I ask you as a matter of fact, if, during your time as counsel to the Board, you did not in matters of difficulty frequently apply to the then Attorney-General to get written opinions on given subjects? A. We got opinions, I do not know whether they were right or not; they ought to have been right.

Q. I ask you why, in this case of novelty and first impression, you being at the time attorney for Hudson and Bergen counties, you did not procure a written opinion from the Attorney-General as to the power of the Board to make that peculiar kind of a grant. A. I answer that you had predicated a question on unwarranted inferences. You say I was attorney for Hudson and Bergen counties, that gives the impression that I had a relation to the Board upon which they relied. I deny it. I had no relation to this Board upon this novel situation other than that of open opposition to the State, I was there as the counsel, openly, of an applicant; the Board was on notice that they must, accordingly, look to me for no advice;

they were not accustomed to look to me for advice on such subjects and I testified, to the best of my recollection; that was made the subject of elaborate discussion before the Attorney-General, and I think he was present when it was granted.

BY SENATOR MINTURN.

Q. How is the title of the applicant to the land in question determined? A. There the applicant would have no title. This is a case under the 36th section which says that the Riparian Commission may give the rights of the State in crossing a stream, river, bay or harbor.

FURTHER CROSS EXAMINATION.

Q. And it was your view at that time that the Navesink railroad when it left the pier at Atlantic Highlands and went up the Shrewsbury river to the bridge, some mile and a half or two miles, was crossing the river, was it? A. Yes, that was my view.

Q. Crossing the river. A. Crossing the bay, why certainly; that was the view of the Attorney-General, too.

Q. It hugged the shore, didn't it? A. That I don't know, it was the lands of the state; it is immaterial whether it hugged the shore or was a mile out, that don't matter.

Q. At any rate that thing was done, was it not? A. Why certainly.

Q. I want to draw your attention next to the Atlantic Ocean Railroad Company matter; there you got the written opinion of the Attorney-General? A. Yes. sir.

Q. You stated in your testimony today that the cases were entirely different and that the same reasons did not apply, or words to that effect, am I right? A. Yes; I did not say entirely different, I said somewhat different; there was a distinction there.

Q. They had no relevancy whatever? A. No.

Q. That is your argument in your statement today? A. That they had no relevancy. I say there was a difference.

Q. Have you looked at the opinion you gave in the Atlantic Ocean Railroad Company case lately? A. My recollection is that I read it over in the minutes that I got yesterday morning.

Q. Are you not aware of the fact that the opinion expressly refers to this crossing matter and says that it is not a case of crossing, as follows— A. Won't you read my opinion?

Q. Certainly. A. Read it all.

Q. If you will kindly let me present my question; I am now going to read some three paragraphs in your opinion; the opinion

seems to be four or five pages long and contains several reasons. A. Alright, read them all.

Q. But I want to read this alone. A. Then I will read it all.

Q. (Reading from opinion.) "The route of the railroad, as filed in the secretary of state's office, shows that the land that they desire to convey is, much of it, below high-water mark on the Atlantic Ocean, in front of riparian proprietors who object to the devoting of the land to such purposes. It will be observed that the application is made under the 36th section of the General Railroad Act which provides 'that it shall be lawful for any company incorporated under this act, in addition to the powers hereinbefore given, to build viaducts over navigable, or other rivers, streams or bay of water which said railroad may cross, putting in said viaduct a pivot draw with two openings each, of no less width than the widest opening of any viaduct or bridge now built over any such river, stream or bay of water at right angles to the main channel, located at a point convenient to navigation'."

With that preface I want to direct your attention to this particular statement in this opinion:

"It is obvious that there is no power given to the Riparian Commission by this section to grant the right to parties to locate and construct a railroad along the whole front of the city, passing in front of riparian proprietors against their will and convey the land for the same. The provision of the statute is confined entirely to crossing the land of the state and provides minutely for draws, lights and other means to facilitate and protect navigation."

It is obvious, I think, from that quotation, that among the reasons you relied on in opposition to the application of the Atlantic Ocean Railroad Company was the reason I have quoted from your opinion A. Read the whole opinion, then you will find out what my opinion was.

Q. Do you decline to answer the question? A. What is your question.

Q. (Last question read to witness as follows: "It is obvious, I think, from that quotation that among the reasons you relied on in opposition to the application of the Atlantic Ocean Railroad Company was the reason I have quoted from your opinion.") A. Why, certainly.

Q. So that your opinion at the time you gave this, on May 11, 1893, concurred in by Attorney-General Stockton, was that no power was given by the Thirty-sixth section of the railroad law "to grant the right to parties to locate and construct a railroad along the whole front of a city passing in front of riparian owners against

their will and convey the land to the same. The provision of the Statute is confined entirely to crossing the land of the State and provides minutely for draws, lights and other means to facilitate and protect navigation"? A. Now, that is just a sample of your questions. I go on and state that this is in the Atlantic Ocean, that it is not in a river, bay or harbor, that it is not a railroad, that it is a pretended one—and the facts before the Commission showed that it started nowhere, that it was a scheme of Thompson's to run a trolley car along the front of the beach to Atlantic City, and I said that was a parody on the thirty-sixth section which did not apply there at all, and every lawyer knows it does not; it has no comparison with the Navesink case, and I gave an opinion which killed the project. In that opinion I say that I take no position inconsistent with the other position, but if I did it was entirely within my rights.

Q. Certainly, in 1893 you did not think that Section 36 of the Railroad Act justified the crossing of a stream and the draws and pivots and— A. I certainly did.

Q. Then why did you say what you did in your opinion. A. Because that had to do with a bona fide railroad; if the railroad is bona fide it can cross without a draw or pivot, it does not have to have it. But, in my judgment, at that time it was a crossing within the meaning of the law; "crossing" is a word which has to be interpreted broadly; it may be just a little bit of a creek without a draw in it, or it may be a crossing like Harriman's Union Pacific, crossing Salt Lake, which is thirty miles long; it was a bona fide crossing, namely, a railroad trying to get from one point to another in the most convenient way.

Q. Then you think a railroad which runs along the shore of the Hudson where the Edgewater railroad runs, or runs along the Shrewsbury where the Navesink railroad runs, is the crossing of a river? A. That is my idea; yes.

A recess was then taken.

GEORGE L. RECORD, sworn. Cross-Examination (resumed) by the Attorney-General.

Q. Mr. Record, I find on page 21 of Minute Book No. 7 there is a record of a meeting of the Board at which Messrs. Holt, Cloke and Farrell were present, when "the application of Louis F. Donahue for a quit claim deed of lands under water of the Kill von Kull between the grant to the Babcock and Wilcox grant and the grant to the city of Bayonne, was presented by Colonel Fuller. The Board in

consideration of the claim that the land under water was already covered by an act of the Legislature of the State of New Jersey, approved February 22, 1849, granted the same and fixed a consideration at $50.00 and the matter was referred to the counsel of the Board for the preparation of grant." A. I recollect that there was a Donahue grant; but I only got a copy of the minutes of your meeting of a month ago, this morning.

Q. Please answer my question; do you remember that question? I don't care whether you got a copy of our minutes of a month ago. A. I don't care what you care. I am going to say whatever I believe is competent to this case, and you are not going to bulldoze me out of it.

THE CHAIRMAN.—The Committee is of opinion that the bulldozing is all upon the other side.

THE WITNESS.—It is only courtesy when I am trying to make a statement as to what I recollect, that I should be permitted to finish.

Q. I ask you if you recollect the fact as appears by these minutes, that there was the application of Donahue for a quit claim deed of lands presented by Colonel Fuller, and that "The board in consideration of the claim that the land under water was already covered by a grant by an act of the Legislature, granted the same and fixed the consideration at $50, and the matter was referred to the counsel of the Board for the preparation of grant?" A. I recollect that there was a Donahue case—beyond that, very little. I was about to explain, which I have a right to, the reason why I don't recollect it. That is all; I think that is pertinent.

Q. You observe from the minutes that the matter was referred to the counsel of the Board for the preparation of the grant. Do you remember that you did prepare the grant? A. I have no recollection about it definitely.

Q. You do recollect the fact, though, that the grant was made for nothing, do you not? A. No, I do not recollect anything except that there was a Donahue grant. I remember that there was a lot of talk about it. I would like to state for the benefit of the Commission that this matter first came to my attention this morning or I would have refreshed my recollection about it and have been prepared to state something on it. My recollection is very dim on that because I have just heard of it.

Q. I will refer you to the opinion which you gave, which, I imagine, you will recollect, in the case of the grant of John R. Goetschius. A. Yes, sir.

Q. Do you remember that? A. I remember that there was such a case.

Q. Do you remember that you gave an opinion? A. Yes, I remember it.

Q. I am reading from it. "Under the circumstances, the rights of the state, if any, to the lands under water are practically without value. In one or two instances, under somewhat similar circumstances, as for example in the Donahue grant, it has been the practice of the Board to make a grant for a nominal consideration." With that opinion in the Goetschius case, do you recollect that the grounds which you then gave for the Goetschius grant were the same that you had given for the Donahue grant? A. I don't remember, but if it is, it of course will show.

Q. This was upon the theory that the grant that the legislature made to Ingham & Jenkins included the *locus in quo?* A. I presume so. The titles of that are not in my mind at all. If I rendered any opinion on it, let's read it and see what it is.

Q. I refer you to a letter to the Hon. Charles Fuller, signed by John C. Payne, in which Mr Payne says that the grant to Lucius F. Donahue is ready for delivery, and will be delivered upon receipt of a check for the amount of the consideration named in the grant and also a check to the order of the counsel to the Board for $15.00 for examination of title, preparation of papers, and so forth. After looking at that letter I suppose that you will not deny that you did examine the title, or did something for which apparently a bill was rendered? A. I presume so. If it was put up to me I did.

Q. So that it is evident that you had knowledge of the fact that the Donahue grant was claimed under a legislative grant and was given for a nominal consideration? A. And that I got $15.00 out of it.

Q. And that you got $15.00 out of it and that you paid Payne half, I presume? A. Yes.

Q. I now show you an application in that case and call your attention to the fact that it refers to the Ingham & Jenkins grant in the appendix to it. Do you recollect that as being the application in the case? A. I presume so. I have no recollection of it. I have no recollection of that time.

Q. You remember, do you not, the time of the Ingham & Jenkins grant? A. I do not.

Q. You have had it before you for consideration? A. That may be, but years ago, and I have forgotten.

Q. At any rate you concurred in the view that the position of Donahue as assignee of Ingham & Jenkins was such that he was

entitled to a grant for practically nothing? A. I assume so, but I don't know whether I did or not. I would like to say that in this testimony which I received this morning, I glanced it over, and I find that Mr. Payne testifies that there is no record of any opinion of mine on the subject of the Donahue grant. I don't know whether there was any or not, but I don't wish to escape responsibility for it. I only say that as at present advice I know nothing of the Donahue grant except in the vaguest way.

Q. It was evidently referred to you and you gave your view. I call your attention to the Goetschius grant. In Minute Book No. 7, page 105, appears the following entry: "Mr. R. O. Babbitt, representing John M. Goetschius, appeared and asked the Board to make a grant of the lands under water in front of the property of said applicant at Fort Lee, for a nominal consideration, upon the ground that the Legislature had already granted directly whatever rights the State might have in the lands under water in question.

"On motion the matter was referred to the counsel of the Board for examination and report." Do you recollect that? A. I do not, I assume it was so.

Q. I observe in your newspaper account of that matter, evidently your attention has been directed to it, you state as follows: "Senator William M. Johnson of Bergen County, first appeared as counsel in the Goetschius grant of the Annett tract"—there is evidently here a typographical error— "So, he stating the filing of the property, I did so in response to his inquiry and based my opinion of the value of the charges made for similar property in that neighborhood and supposing that the State owned the land." A. That is correct.

Q. "Later Mr. Babbitt appeared as counsel and submitted a legislative grant made in 1894 or thereabouts, and proved that the grantees had used this land as a ferry for more than half a century." You now say that your statement in the public press, that later Mr. Babbitt appeared and presented the fact that this property was held under legislative grant made in 1840 is a mistake. A. I think so. I wish you would allow me to explain.

Q. I don't want any explanation. If the Commission does, I have no objection. A. I ask for the privilege of explaining my testimony.

THE CHAIRMAN.—The Committee would prefer very much that Mr. Record would not delay the proceedings, and would make note of any explanations he wishes to make and give them afterwards.

Q. You were in error when you made the statement in the newspapers that Senator Johnson first appeared? A. Yes, since

then I have found my letters in my letter book which refreshed my recollection, and I now state simply from these letters which were read this morning that the senator evidently wrote me, and I thought when I first saw it that it was one of the usual grants where the people write asking what would be the price of the grant if made. It now appears by the letters that the senator called my attention to the two acre plot and I gave the price. Further than that my first statement is incorrect.

Q. Why didn't you look up your letters before you made that statement in the newspapers? A. Well, I didn't know that I had the letters.

Q. At any rate we find the matter was referred to you, and we find that from the beginning the Goetschius grant was completed as based upon the so called Annett grant? A. Yes.

Q. And that it was referred to you for advice. Now, I find reference in the minutes of September 25th, 1901, that the counsel of the Board reported in favor of the grant for nothing; do you remember doing that? A. I don't remember it, but here is a copy of my opinion that was given. I stand by that. Here is a copy of the opinion.

Q. I have not asked you for a copy of the opinion. I have asked simply for your recollection. Mr. Record, there had been some litigation in the Courts in which you were interested concerning some rentals due upon this Annett grant; did you not? A. There had been some litigation in an Annett grant, but it was not called to my attention that it was the same one, and I never supposed it was the same.

Q. Recurring to the minutes, in order that the record may be, straight, I find on page 112 of the Minute Book No. 7, under date of August 15th, the following. "In the matter of the application of John M. Goetschius for a writ claim deed, the counsel for the Board reported having examined the matter and advised that the grant be made. On motion the report was received and ordered filed, and the consideration fixed at $50.00." Now, was it not true that the Board had, in 1874, long before you were connected with it, made a lease of this very property to the heirs of Annett? A. It is possible that that is a fact. If so, there has been a most outrageous and absurd blunder made.

Q. I did not ask about the consequences. I want to know if it is true? A. I do not know. It was not called to my attention. I never dreamed it was so.

Q. You never dreamed it was so? A. Certainly not.

Q. Didn't the arrears get so great that the state brought suit

and that you represented some of the defendants in that suit? A. Yes.

Q. So that you were concerned in the suit? A. Yes.

Q. You do not know what that suit was about? A. Certainly I did. I didn't know it had any connection with the property.

Q. It had a connection with the property described in the suit, in the information? A. No; not that I knew of.

Q. Did you have a copy of the information? A. I presume I did once—17 years ago.

Q. Be careful. I want to know if you did not appear for some of the defendants in the suit filed in the Court of Chancery by Attorney-General Stockton in the nature of an information to collect rentals upon this very property? A. I did.

Q. You know that rent was not collected in that suit? A. No, I do not know that.

Q. What? A. I did not know that.

Q. What happened to the suit? A. Well, I will tell. In 1899 or thereabouts, or 1900, a man came to my office and said—

Q. (Interrupting) You are answering what happened to the suit? A. I am trying to describe—

Q. (Interrupting) I ask you what happened to the suit? A. I don't know what happened to the suit.

Q. Don't you know that the rents were not, in fact, collected? A. I don't know.

Q. Were they ever collected? A. I don't know.

Q. Were you not resisting the collection of the rents? A. I was resisting the forfeiture of the lease and an attempt to foist the collection of the rents upon my client who was one of thirteen defendants.

Q. It was part of this property? A. That is right—part of an Annett property.

Q. Do you know that it covered the very property upon which the Goetschius grant was made? A. On the contrary I never dreamed of it. It was never supposed to be. In fact, I never dreamed of it.

Q. You represented a defendant in the suit? A. Yes.

Q. In which certain property is described? A. Yes.

Q. And you represented the state in a grant in which certain property is described? A. I did not. The particular subject before me was "What is the effect of an act of 1840 on some land;" I gave them my judgment of the effect of that action a piece of land. I don't know what the land was.

Q. You knew what— A. (Interrupting) The act of 1844 did not

describe the land ; my opinion did not describe the land and it was never brought to my attention that it was the same land. On the contrary the Johnson letter shows that I thought it was a two-acre tract.

Q. You admit the reference of the matter to you ? A. I know nothing about the technicalities of it. I am telling you what I know of it.

Q. Your recollection of it ? A. As I recollect it.

Q. I want you to recollect what the minute book says in reference to the reference of this matter to you, on page 211, " the application of Lucius F. Donahue for a quit claim deed of lands under water of the Kill Von Kull between the grant to the Babcock & Wilcox company and the grant to the city of Bayonne, was presented by Colonel Fuller. The Board, in consideration of the claim that the land under water was already covered by a grant by an act of the Legislature approved February 22nd, 1849, granted the same and fixed the consideration at $50.00 and the matter was referred to the counsel of the Board for the preparation of the grant." A. An additional grant in the Donahue case ?

Q. Yes. A. It doesn't say so the way you have read it.

Q. Whatever it said, I want to know. A. You say I recommended it. I don't know whether I did or not.

Q. I will read it once more. I will read it again. " In the matter of the application of John M. Goetschius for a quit claim deed— A. (Interrupting) That is not the Donahue matter.

Q. What about the Donahue matter ? A. You said the Donahue grant.

Q. I mistook it. A. I thought you did. I want to get the record straight.

Q. It did not occur to you before advising the Board that they should give a quit claim deed of this property that was worth hundreds of thousands of dollars for fifty dollars, that you should at least ascertain whether the large arrearages of rents amounting to several thousand dollars had not been collected, you having formerly represented one of the defendants who owed that rent? A. That is a question that is absolutely dishonest from start to finish. There is not a word in it that is true.

Q. I want you to distinctly understand that I am not accustomed to be spoken to in that way and you would not do it with impunity in any other situation, and I don't propose to have you do it here. A. You won't put such questions to me without getting that characterization of them every time. We can fight it out now as well as

any other time. There isn't a word of truth in the alleged statement of facts in the question.

Q. Is that your answer? A. That is my answer.

Q. You have no other answer? A. I don't say that.

Q. Make it. A. My answer to the question is that I did not suppose it was the same land. I did not know it was worth hundreds of thousands of dollars; I did not know there was anything accrued upon it; I did not know even that this had been made the subject of a riparian grant; I supposed it was another piece of property, there being several Annett pieces, and I supposed it was a two acre tract worth $15.00, as I said in my answer to Mr. Johnson. That is what I thought I was dealing with. I would like an opportunity some time to explain why it was and what my connection with the Annett case was. If you don't care to bring it out I will bring it out later.

Q. I want to know why it was that it never occurred to you to find out what the record showed, that this Annett grant, which was made in 1874, was this very property, concerning which Goetschius applied for a grant? A. Why, the reason it did not occur to me was because it was not my business to look up the record. I was asked the construction of a statute; I gave it. It never occurred to me to inquire whether the Riparian Commission had made two deeds on the same property. I never heard of such a thing. If that was done it is the most scandalous thing that ever went through the office.

Q. You did know that there were proceedings taken to collect the arrearages of rents? A. On *an* Annett lease.

Q. You did not take the pains to find out whether it was the same or not? A. It was not put to me to find out.

Q. And yet you advised the making of a quit-claim deed for fifty dollars? A. I advised the making of a grant under the circumstances.

Q. For fifty dollars? A. No; not for fifty dollars; for a nominal consideration.

Q. A nominal consideration? A. Yes.

Q. Then a grant was made in the form of a quit-claim deed for fifty dollars? A. Yes.

Q. Of course, that releases any rents— A. (Interrupted) Absolutely, no.

Q. What? A. It was absolutely a piece of waste paper. It is not worth fifty dollars.

Q. Will you tell me how the State, or the Riparian Commission, can claim these arrearages of rents, when it has given a quit claim

deed? A. Yes; I can, under the condition of the riparian law, as I understand it. The Riparian Commissioners are a creature of the State. They have absolutely no power except that of the statute. The statutes authorize them, upon an application for either a lease or a grant, to make the same. If it is a lease, they collect the money. It is sent to the State Treasurer, and under the law it becomes part of the school fund. It goes from the Riparian Board; they are finished with it; they are exhausted. If a lease is granted, then the lease itself goes to the school fund, and the rentals are collected, and the Riparian Commission have exhausted themselves, except that in the lease is a covenant that if the grantee appears and pays the principal sum and all arrears of rents, then and in that case a grant will be executed; and when executed, it is the same thing as the original lease, except that the rental is turned into a recital of the payment of the principal sum. Now, having, in 1874—if those are the facts—the Annett leases—there were two of them—made to the Annett heirs; if they were made to the Annett heirs, and those leases passed to the trustees of the school fund, the only power of the Riparian Commission therein was to receive an application to convert that lease into a grant, to receive the rents, to recite the payment of the rentals, to recite the payment of the principal sum, and to execute the new grant in accordance with its terms. Any other paper is not worth fifty dollars, one penny, or a cent. It is so much waste paper.

BY SENATOR AVIS.

Q. What is the quit claim deed referred to in the minutes? A. All that appears to be, so far as I can gather, is a deed which recites the original legislative grant of 1844—an act of the Legislature—made to Robert Annett. It recites that original legislative grant, and the deed simply confirms that grant, whatever it was.

Q. When did the Riparian Commission, by statute, get the power to make a quit claim deed under those circumstances? A. They did not, if there was any lease.

Q. If there wasn't any lease, when did they get the power to make a quit claim deed?

THE CHAIRMAN.—We have had that in the previous testimony, when Senator Avis was not here.

Q. The Riparian Board have the power of making a quit claim deed where the Legislature has made a grant previously? A. My idea is that it is so. Nobody knows what is the construction of that statue; at least I don't. I won't say nobody does. I have always thought that the Riparian Commission had the power, if nothing is

on that plot of ground, to make such price as they chose. After they do that, they have exhausted their power.

BY THE ATTORNEY-GENERAL.

Q. Assuming that the Annett heirs, in 1874, were advised, (to the contrary of your advice, to which I shall advert in a movement)—that the grant to Annett was ineffective; and that they then applied to the State and recieved a lease, as they did, (as I shall show you in a moment) they certainly were not incompetent to hold under that lease, having paid the rent, were they not? A. Well, that is a question of law; I have never considered that question.

Q. Well, when you examined the title to this property, didn't you stumble across the record? A. Absolutely, no. I only examine the title to the upland.

Q. Didn't you examine the title? A. Not to the land under water.

Q. So that you had no idea that there had been a lease? A. Absolutely, no.

Q. Then, you did not— A. (Interrupting) If I had, I would have immediately stopped it. He was wasting his fifty dollars.

Q. These letters didn't give you any idea that it was the same property? A. I never heard of it.

Q. Although you had been counsel for some of the heirs? A. Eleven years before; but I didn't dream it was the same one. You remember there are several pieces.

Q. There were two. A. I thought there were more than that.

Q. How many? A. I don't know.

Q. Don't be so free with your statements. A. I say I thought there were more.

Q. Supposing the lease was entirely out of it, and there was a simple legislative grant, then why didn't you apply this section which requires the Board, in such cases, to receive so much—seven dollars—a front foot, or whatever it is, for rental? A. Because my idea has always been—my opinion has always been—and is now, that that section is discretionary; that subsequent to that section different riparian acts were passed which gave the Commission the right to make any grant at any such price as they saw fit, assuming that they had not already made it, and my feeling on that is this—that if that was meant to be obligatory, it would come to this absurd condition that you can grant to a man for twenty dollars a foot, if he has not a legislative grant; but if the rights of the state have been given away by a legislative grant, you must charge him fifty; which is absurd.

Q. You undertook to overrule the statute? A. I did not under-

take to overrule it. I undertook to say that it did not apply. I believe—

Q. (Interrupting) Did you consider it at all? A. I cannot say now.

Q. You knew of this statute, of course? A. Certainly.

Q. I refer to the fourth section of the act of 1869? A. We all knew that statute.

Q. (Reading) "In case any person * * * * who by any legislative act, is a grantee or licensee,"—that is what the Annett people claimed to be? A. That is right.

Q. (Reading) "or has such power or authority, or any of his, her or their representatives or assigns"—that is what Goetschius claimed to be? A. That is right.

Q. An assignee of Annett who claimed to be in possession of a legislative grant? A. That is right.

Q. (Reading) "shall desire a paper capable of being acknowledged and recorded"—that is what they desired? A. That is right.

Q. (Reading) "made by and in the name of the State of New Jersey conveying the land in the provision to the third section mentioned whether under water now or not, and the benefit of an express covenant, that the State will not make or give any grant or liscense power or authority affecting lands under water in front of said lands, then in either of such cases, such person or corporation, grantee or licensee, having such grant and license, power or authority, his, her or their representatives or assigns on producing a duly certified copy of such legislative act to said Commissioners and in case of a representative or assignee also satisfactory of his, her or their being such representative or assignee, and requesting such grant and benefits as in this section mentioned, shall be entitled to said paper so capable of being acknowledged and recorded, and granting the title and benefits aforesaid, on payment of the consideration hereinafter mentioned; and the said commissioners or any two of them, with the Governor and the Attorney-General for the time being, to be shown by the Governor signing the grant and the Attorney-General attesting it, shall and may execute and deliver and acknowledge in the name an on behalf of the state, a lease in perpetuity to such grantee or licensee or corporation having such grant, license, power and authority, and to the heirs and assigns of such grantee or licensee, or to the successors and assigns of such corporation, upon his, her or their securing, to be paid to the State, an annual rental of three dollars for each and every lineal foot measuring on the bulk-head line, or a conveyance to such grantee or licensee or corporation having such grant, license, power

or authority, and to the heirs and assigns of such grantee or licensee, or to the successors and assigns of such corporation in fee, upon his, her or their paying to the State fifty dollars for each and every lineal foot measuring on the bulk-head line, in front of the land included in said conveyance." Why did you not at least advise the Board that they should comply with that act? A. Because I did not think it applied.

Q. Why did you not think it applied? A. I think that the subsequent riparian acts give the Commission discretion in such cases.

Q. Which specific act? A. I will file with you a brief if you want me to.

Q. I don't want you to file a brief; what specific act gives the Commission discretion? A. Go through the revision and when we come to the act I will show it to you.

Q. (Showing witness) Did you prepare this compendium which I hold in my hands? A. Very likely.

Q. Will you look at it; did you prepare that book? A. I believe so.

Q. What act is there in that book that you think gives the Board discretion? A. Here is one, March 21st, 1871: "Be it enacted by the Senate and General Assembly of the State of New Jersey, That any riparian owner, on tide waters in this State who is desirous to obtain a lease, grant or conveyance from the State of New Jersey of any lands under water in front of his lands, may apply to the Commissioners appointed under the act to which this is a supplement, and the supplements thereto, who may make such lease, grant or conveyance with due regard for the interests of navigation, upon such conveyance therefor, to be paid to the state of New Jersey, as shall be determined by said Commissioners, which lease, conveyance or grant shall be executed as directed in the act to which this is a supplement, and the supplements thereto, and shall vest all the rights of the state in said lands, in said lessee or grantee."

BY SENATOR AVIS.

Q. Do you think that this quit-claim deed is contemplated by that act? A. I think so, for this reason; the absurdity of the fifty dollar act is just as I have said. The Commission grants any amount of grants at ten dollars, fifteen dollars and twenty dollars a foot. It cannot be the meaning of the Legislature that where a man already had a grant he should pay fifty dollars a foot, while if he had no grant he should pay ten dollars a foot.

Q. It might be that the Legislature thought that his property was more valuable. A. I don't think so. There are various other acts which give the Commission power.

BY THE ATTORNEY-GENERAL.

Q. Do you find any modificatons in the acts, applicable to a legislative grant, where the assignee comes and asks for a grant? A. In my opinion that act is discretionary, and that the act gives the Commission the power to do it; but I say the Riparian Commission is a creature of statute, and if the construction of the law which you seem to hold is the true one the Goetschius grant is void, and it is your duty to get that back to the state, and I will watch and see you do it.

Q. That may be. A. I shall be very glad to aid to get back that property.

Q. You know that Goetschius grant is void for two reasons? A. I do not. If that act bears the construction you place on it, this grant is worse than waste paper. All you have to do is to take proceedings to—

Q. (Interrupting) You advised it for fifty dollars? A. I did.

Q. You advised giving them a quit-claim deed? A. Indeed I did.

Q. Look at it and see? A. I advised the construction of the statute of 1844 on the assumption that the land in question was under that. I gave an opinion. That opinion I stand by.

Q. Now, I have said two or three times today, that in cases of doubt you applied to the Attorney-General. Did you apply to the Attorney-General when this Goetschius matter came up? A. That I cannot say.

Q. Don't you know that you did not? A. No; I don't.

Q. Did you? A. I cannot think.

Q. You cannot think? A. I say I don't remember whether I did or not. I have submitted my opinion to the Commission. It was either good or bad. If it was bad law, there is no harm done, and all you—

Q. (Interrupting) The question is not whether any harm has been done; the question is whether you were giving these valuable grants away for nothing. A. The question is: Here is this Committee—

BY SENATOR AVIS.

Q. (Interrupting) It was appointed to find out how these grants were made. A. It was not appointed to find out whether I had made an opinion which in law was a mistake. This thing has been turned, as you know, into an attempt to make it appear that I have given opinions which were not sound.

BY THE ATTORNEY-GENERAL.

Q. You did give an opinion in this grant? A. I did.

Q. Recommending it for fifty dollars? A. No; I did not. Let us be accurate.

Q. Well— A. I think fifty dollars was their charge.

Q. Did you take the pains to look at this record of the Commission, Liber A, pages 318, 331, where applications are made by the heirs of Robert Annett, one of whom was your client, for leases. A. One of whom was my client when?

Q. In the suit which I am now speaking of, later. A. Later when?

Q. A little later? A. I don't know that.

Q. And that applications were granted and leases were made for the very property in question? A. I deny it was the property in question.

Q. Look at the grants and see. A. I am saying that I never passed any opinion upon that property.

Q. When you say you deny it was the property in question, do you mean that? A. I mean to say that if Payne has put through a grant of this kind—the Annett grant—he is a swindler. He was the only man that knew that was the same property, and when he didn't call that to my attention, I say he is a common swindler.

Q. I want to know if it is true that you represented one of these defendants in this information filed a little while afterwards by Attorney-General Stockton, in which the Attorney-General sought to collect the rents under their leases, and whether in the papers which were filed in the Chancery office, the property was not described? A. I have to say as to that that I represented one of the Annett heirs about eleven years prior to the Geotschius grant in a suit. What the property was I do not recollect, and did not then recollect.

Q. You didn't know? A. Certainly I didn't

Q. (Interrupting) You never knew? A. It was not before me what the property was. The Attorney-General took these proceedings; I filed an answer for my client, and—

Q. (Interrupting) I observe there is no approval by the Attorney-General of this opinion. A. Not on that paper.

Q. I also observe that you say as follows: "In one or two instances, instances under somewhat similar circumstances, as for example in the Donahue grant, it has been the practice of the Board to make a grant for a nominal consideration." Was it your opinion, then, and is it your opinion now, that the Goetschius case and the Donahue case were the same? A. My opinion at that time was whatever that language expresses.

Q. Just answer my question. Was it your opinion that the rights

of the parties in the Goetschius case under the Annett grant, regardless now of these leases— A. My opinion is expressed in that paper.

Q. I have not asked you that A. That is my answer.

Q. I want to know whether when you wrote that opinion, it was your view that the rights of the parties, under the Ingham and Jenkins or Donahue grant, and the Annett or Goetschius grant, were the same. A. I don't say that in here; therefore, I don't know what my opinion was. I said they were somewhat similar.

Q. Were they the same? A. I don't know. The language is there, whatever it is. Read it. That is my opinion.

Q. You gave it to the Board as your opinion that they should have the grant. You say: "Under the circumstances, the rights of the state, if any, to the lands under water are practically without value. In one or two instances under somewhat similar circumstances, as for example in the Donahue grant, it has been the practice of the Board to make a grant for a nominal consideration, and I am of the opinion that such a course should be followed in this instance." A. That is correct.

Q. Because they had done it in the Donahue case. A. Well, I can go through these motions with you, if you wish. That is my language, and that is my opinion.

Q. Because they had done it in the Donahue case? A. I state there that they had done it under somewhat similar circumstances.

Q. Did you consider that the Donahue grant was a precedent for this? A. Presumably I did, or I would not have said that. It was certainly a precedent for the practice of the Board. I don't know anything about the law of it.

Q. Do you remember giving an opinion in the Guffey Petroleum case? A. I do not.

Q. Did you give an opinion dated May 6, 1902, of which I show you the original? A. If there is an opinion on file, it is mine.

Q. (Showing witness) Is that your opinion? A. It was my opinion at that time. I am trying to find out what it says. I have forgotten all about it. Do you want to start asking questions before I read it?

Q. No; read it. A. (After reading.) Go ahead.

Q. Have you read it? A. Yes.

Q. Now, you apparently did not refer the matter to the Attorney-General in this Goetschius grant, but recommended the giving of the grant for a nominal consideration. Will you tell me what it was that had happened between February 2, when you wrote Senator Johnson that the State should get a substantial consideration, and

the time when you wrote the opinion ; what happened to change your views ? A. I cannot recollect it, but I assume that what happened was that Senator Johnson or Babbitt, and I sat down and discussed the matter at length. Then I believe they brought up the case in 1859 upon this tract of land, where it was the subject of a judicial decision, and that may have been what caused me to change my opinion.

Q. What opinion do you refer to ? A. It is mentioned in there.

Q. That case in Dutcher ? A. Yes.

Q. You know that that case has no application ? A. (Reading) "The Court held that these particular wharves were private property and were not in any sense public wharves." I presume that that may have been called to my attention.

Q. What did that have to do with the rights of the state ? A. You are asking what changed my views, and I am telling you.

Q. Do you say, in view of the fact that you wrote Senator Johnson time and time again on the subject of this grant, saying that the state should be compensated—how do you account for the fact that as soon as Senator Johnson drops out of the case, you recommend the grant for a nominal consideration, without applying to the Attorney-General for his opinion ? A. That is another dishonest question. It does not appear that I did not consult the Attorney-General. It does not appear that Senator Johnson dropped out of the case. There is nothing to show any change of opinion. On the contrary, the fact is that my letters to Senator Johnson were preliminary, and stated to be such. I discussed the thing pro and con. I went over the matter perfectly impartially and in a judicial manner, until I came to this decision.

Q. You say that it does not appear that Senator Johnson withdrew from that case. Look at that letter (showing witness). A. It does not appear to me.

Q. Didn't you so state in your newspaper account ? A. I might have. If I said it in the newspaper account, I took it from your statement, that he had dropped out. I don't recollect that he did drop out.

Q. I want to know, after Senator Johnson dropped out, in the absence of any advice from the then Attorney-General, why you changed your mind from the views you expressed in the Johnson correspondence, and recommended the grant. A. I presume I did not change my mind because my mind was not made up.

Q. That is it, is it ? A. Why, certainly. This is a letter that I never saw to my recollection. This is a letter from Senator Johnson to Mr. Goetschius.

Q. Now, Mr. Record, I want to know, in view of the provisions of the fourth section of the act of 1869, and in view of the fact that the Goetschius grant was alleged to be a legislative grant, why was it that, without consulting the Attorney-General, after Senator Johnson had dropped out of the matter, you consented that the state should make this grant for a nominal consideration. A. I deny it.

Q. You consented in your opinion that the state should do so. In view of the fact that you say the proper interpretation of the act was of great doubt, and you did not know what interpretation the Court would put upon it? A. That is right. I did not know what interpretation the Court would put upon it.

Q. What reason moved you, without any new light, as far as appears or that we are able to discover, to recommend to the Riparian Commission that they should make this grant, worth thousands of dollars— A. (Interrupting.) I deny it. I deny every point in your question. I did say to Senator Johnson when the thing was before me in a preliminary fashion—I wrote him in a preliminary way—stating an off-hand impression of the law. The last thing I say is, "Come down and sit down with me and consider this legal question, and thresh it out," and later on another man appears, and, presumably, I sat down and threshed it out with him, and finally I arrived at a legal conclusion, which we all do, and I make no pretense that a letter written by me, when a question is first put before me, is my final conclusion on a question of law. The question is gone into and the reasons are stated.

Q. You have no other reasons to give? A. Not that I can remember.

Q. You recollect the fact that in the opinion that we had before us you recognize the Donahue grant as being in point? A. I said it was somewhat similar.

Q. Did you not, in this opinion which you gave in the Guffey Petroleum case, which is a part of the Ingham and Jenkins grant, expressly differentiate the cases? A. I expressly differentiate the Ingham and Jenkins grant from the other, expressing my reasons for the same. My recollection is that the Ingham and Jenkins grant was a grant which had been divided up among several people, and the question came up as to whether or not all the parts of it had been improved, and as to the question of the word "heirs" which was in the Annett grant and was not in the other, and I distinguished the cases.

Q. Now, when you gave that opinion in the Goetschius case, you relied on the Donahue case? A. No; I did not. I say of the Dona-

hue case that it was "somewhat similar," where the Board had concluded that the state had no title, they gave it for nothing. I said it in that way. Now, I assume in the Donahue case, that they came to the conclusion—I have no recollection about it, and no opinion has been presented to me—I assume that we came to the conclusion that for some reason that portion of the land had the legislative grant attached to it still.

Q. Now, listen to me before you answer. Is it not true that the Donahue grant was part of the Ingham and Jenkins grant? A. That I don't know. I assume that was so.

Q. It said so in the petition? A. That may be.

Q. Why was it given for nothing? A. The Donahue business I cannot explain at all. No opinion appears; it has not been brought to my attention.

Q. You evidently got a fee for examining the title, so you must have known something about it? A. At the time, no doubt.

Q. You know it was part of the Ingham and Jenkins grant? A. I assume it from these papers.

Q. That you recommended without any concurrence of the Attorney-General, so far as it appears? A. I don't know whether the Attorney-General concurred or not. Why not be fair? Why state that I did this without the concurrence of the Attorney-General?

Q. Is there any evidence that you did? A. Is there any evidence that I did not.

Q. There is nothing to show that you did. A. That is another proposition. I went to the Attorney-General over and over again with all sorts of riparian matters, but I did not always get his opinion in writing.

Q. Do you say that you went to the Attorney-General in the Goetschius matter? A. I didn't remember anything about it.

Q. There isn't any record that you did. A. You put it the other way.

Q. I will put it the way I find it. The record does not show that you did; I say the fair presumption is that you did not. A. It is not a fair presumption. The presumption is the other way.

Q. I don't think it is. A. In every case where I consulted with the Attorney-General I did not always get an opinion in writing.

Q. Why did you recommend giving the Goetschius grant for fifty dollars? A. I recommended the Goetschius grant for fifty dollars because the question left to me was whether a couple of wharves, two acres in extent, in actual construction and built since 1844, under a statute of that year, vested in Goetschius the title; and I

found, on final consideration of the case, examining the later case, examining the later case that they presented to me, debating it and considering it, that the rights of the state in those two acres had gone. I gave that as my opinion.

Q. The case that you refer to as being presented to you is the case in Dutcher. Don't you know that that has nothing to do with the case at all? A. I don't know.

Q. It simply says that this not being a public wharf—what has that to do with it? A. I think it has a good deal to do with it.

Q. What? A. It simply shows that the public had not used it, and the doctrine of non-user did not apply; it was private property.

Q. I am speaking as to the case of the state. A. I was considering that case in the question of non-user.

Q. You have no other explanation to give? A. I will have to think about the Geotschius case.

Q. Think about it now. A. I would like to say that there is some great mystery about the Geotschius case. It ought to be probed to the bottom. There is something about this case that does not appear; and I put you on notice that there is something in this case that has not yet come to the top.

I want to state my connection with this matter. Seventeen or eighteen years ago—more than twenty years ago—a Mr. Washington Maas came into my office and stated that he had been sued by the Attorney-General on a riparian lease on the Hudson river; that there were some thirteen or a large number of thousands of dollars of accrued rentals then owing; that the Annett heirs who took out the original lease were either scattered or hadn't a dollar; that his wife was one of the heirs and was the only person financially responsible; and that the effect of the decree, if the Attorney-General prevailed, would be to forfeit the lease and compel her to pay these total arrears of rents, although she had only a one-thirteenth interest; I think there were thirteen heirs. Under the circumstances, he retained me to defend the case. I defended it in the Court of Chancery before Chancellor McGill. I maintained that you could not forfeit the lease in any event, and certainly you could not forfeit the lease and collect the rentals at the same time. The chancellor never decided the case to the day of his death; he just held it. After a while the Attorney-General came to me, or I went to him—it is immaterial which it was—and we agreed that a stipulation should be entered into, that whatever was done with the case in the future, no money judgment should go against my client. That was all my client cared for—that he should

not have to pay any money; he did not want anything to do with the land. Such a stipulation was given. My client paid my bill and disappeared, and I never heard of him since. That was eleven years or thereabouts before this Goetschius matter came up. When the Goetschius matter came up, it came in the form of a letter by Mr. Johnson. I haven't the letter, but from my answer, it would appear that he wrote about a piece of land, which I identified as a couple of existing wharves, two acres in extent. Later Mr. Babbitt put in a formal application which I never saw. I never read applications, or descriptions or that sort of thing; but the matter came up down at Sea Girt on the porch of the Governor's cottage, and the discussion was relevant to the effect of the act of 1844, so far as my recollection goes. So far as my recollection goes, the whole Board went over this proposition on the theory that all it applied to was a couple of acres of land worth at the outside fifteen hundred or two thousand dollars. It was said that the wharves had been in existence for half a century, and that the title of the state was divested, and that under the circumstances, the Board ought to make a grant upon a nominal consideration. I said that under the circumstances, it ought. It is now charged by the Attorney-General that the grant covered lands on which a previous lease already existed, on which there was due a large arrearage of rentals. If so, I say that there was a swindle. I never heard of it; I never knew it; and whoever is responsible for it, ought to be made to pay the penalty of the wrong that was committed, if any. I say that when it was made, all of the Commissioners—and certainly I—supposed that it applied to a couple of wharves opposite One Hundred and Twenty-fifth street. That is my recollection of it. My opinion further is, that these applications and maps are in the custody of the secretary of the Commissioner and the engineer; that when he makes out a deed he records it, and then he draws, at the end of it, a map. The deeds never come to me. I never certify to a deed. I never look up a deed to land under water except a question of description comes up as to the low-lands or as to the amount of the shore front to be attached to the particular amount of upland. When the secretary gets the deed and draws the map at the end, he then goes to the regular maps of the Commission, and there he colors, in red, the white space that is left on the map where the grant was made. You can see by the map that when he went to color it and found that the thing had been previously granted, it was his duty to call it to my attention; and if I refused to consider it, it was his duty to bring it to the Board's attention, as evidence of the fact that I would not consider a pertinent fact.

Q. We are not concerned with that. Have you any further explanation to give of this Goetschius matter? A. I am not required to make any. My skirts are clean. I gave a legal opinion, which was sound then, and it is sound now. There is now a thread of anything to reflect upon me.

Q. I am glad you think so. A. I don't think so ; I know so.

Q. How do you account for the fact that in the Guffey Petroleum case you appealed to the Attorney-General, and in that case some $27,000 were obtained by the State under the Ingham and Jenkins grant— A. (Interrupting) Was that at fifty dollars a foot ?

Q. How do you account for the fact that you let it go through without the fifty dollars a foot? A. I will answer that question. That was done at the end of a law suit. Law suits do not change statutes.

Q. I think they do. If you think a law suit cannot change a statute, you know that is not so? A. A law suit cannot say that when I give an opinion, it applies, and when you give an opinion it does not apply.

Q. I want to know how it is that in the Goetschius case, where with the Attorney-General's advice under a legislative grant, some $27,000 were obtained, why did you under an opinion in which the Attorney-General had not concurred, you gave it for nothing in the Goetschius case? A. You have mentioned the Goetschius case twice in that question.

Q. How was it in the Guffey Petroleum case, where, under your opinion, concurred in by the Attorney-General, it was improper to make a grant for nothing, and the State got some $25,000 ; yet in the Goetschius case, under a legislative grant, the State got fifty dollars? A. The opinion distinguishes between the two.

Q. And satisfactorily, you think? A. I don't say as to that—satisfactory to me at the time.

Q. I understand your statement made in the newspapers to be that you concede that you owe the state some money for furniture that you kept, but that you never got a bill. Am I right? A. No, sir.

Q. Is not that your contention? A. No.

Q. That is not your contention? A. No. My statement was, if you will allow me, that I supposed we had settled between us what I was to keep and what I was not to hold ; but after that settlement went through, Mr. Payne said that an item of furniture, a filing case worth about forty dollars—a very important matter—was not included ; and the president of the Commission came to me and asked about it. I said: "I want the case because my papers are in

it. Tell me what you want for the price of it, and I will send you a check." I have not heard from—

Q. Do you contend that you are ready to pay whenever you have notice? A. Why, certainly. If they want the value of the filing case, I will live up to my promise, even though—

Q. (Interrupting) Do you think that you ought to have the filing case for nothing? A. I thought it was included in the settlement.

Q. Do you know anything about the settlement being fixed in the minutes? A. No; I never saw it. I met the Committee. I never knew what they put in the minutes.

Q. I refer you to Minute Book No. 7, page 387, where the following record appears: "In the matter of the change in the location of the office of the Commission, which was referred to Commissioners Cloke and McLaughlin as a committee at the last meeting, the Committee reported that they had arranged to take over the lease of Potts & Higgins for three rooms in the west end of the 'L' of the building on the fourth floor.

"The vouchers in the office of the Riparian Commission show that the Commissioners own the following new articles of furniture bought by the State when the Commission moved into its present offices:

"A carpet, the book cases, the directors' table, the small table, six directors' chairs, the hat tree, one filing case, the settee and a typewriter chair; the vouchers also show that Mr. Record paid for one filing case, which cost $46, and paid for the incidental expenses of moving his own personal property into the present offices, amounting in all to $72.00.

"Mr. Record offered to relinquish his ownership of the filing case above referred to, and in return the Committee agreed to relinquish the ownership of the carpet and the sectional book cases in the meeting room; the cost of these articles being $154.

"The Committee accepted this arrangement and the matter was closed." Is that correct or incorrect? A. It is incorrect according to my recollection.

Q. It is incorrect according to your recollection? A. Yes. I take the same position that I took before. It is a matter of forty dollars, and I don't discuss about forty dollars. Send me a bill for that amount, and I will pay it.

Q. I want to know whether or not you have always contended—it is not the forty dollars— A. (Interrupting) I thought that you were trying to get this forty dollars for the State.

Q. It is not the question of forty dollars. It is the question whether you have got the State's property. I want to know

whether you have always contended that you owed the State some money on account of that case? A. I owe the State money?

Q. I want to know whether you have always contended that you owed the State some money on account of that case? A. I have contended always that when we got down to the new building there was a double set of bills. I said to Mr. Payne, whatever I am to pay—

Q. (Interrupting) You are not answering the question. Since the settlement did you or not contend that you owed the State some money, and that as soon as you received a bill for it, you would send a check? A. I have contended that I didn't owe the state any money.

Q. You have? A. Yes, sir.

Q. You never have claimed that if you had a bill, you would pay for the case; you have never claimed that you owe the State for it? A. Just the other way; but I say if there was any misunderstanding as to whether it was included in the settlement—I claim that it was, and they claim that it was not—but if there was any misunderstanding, I didn't want to take my papers out of the case; I want the case to stay; it could be duplicated, and would they send me a bill for it—

Q. You have said that? A. I have always said that; that was my position.

Q. You remember, in the meantime, you have been presenting a bill against the state for rent for sixty-eight dollars, do you not, and that finally on the fourth of June last you was paid a check for sixty-eight dollars? A. I remember that I had a claim against me individually, in which, when I came to pay, I went over my papers, and I could not find the bill for the rent of November. I referred it to Mr. Cloke. I first sent my clerk downstairs and was unable to get it.

Q. Answer my question. Have you or not presented a claim which was recognized, that you had not been paid for one month's rent? A. I should say, yes.

Q. And you wrote a letter, did you not, demanding the payment of that bill? A. I wrote to Mr. Cloke.

Q. Why didn't you suggest that perhaps this claim of the State against you for the other piece of furniture, should be offset against that claim of yours? A. Because I assumed that when Mr. Cloke went downstairs and ascertained my position on the other, he waived that claim. I said: "You take it up with the Commission, and if you say that I owe you for it, I will pay for it." Never having heard afterwards, I thought that they decided to drop it.

Q. Have you your check book? A. I have.

Q. Will you send for it and find that ninety-five dollar check? A. I did not present any ninety-five dollar check.

Q. You said you did in the newspapers? A. I didn't say I did in the newspapers.

Q. You did not? A. No.

Q. Didn't you say that you presented two checks? A. I did that.

Q. What? A. That is my recollection.

Q. Have you got both of those checks? A. I don't know.

Q. Won't you send for it and see? I refer to the checks—one of which was photographed, and one of which was not—I refer to the check for ninety-five dollars— A. (Interrupting) I deny that I said any such thing in the newspapers.

Q. You have just said here that you had two checks? A. That is right—neither of which was ninety-five dollars.

Q. What were they? A. One of them, as I recollect—I am only testifying from recollection—was for seventy-five dollars, to the order of John C. Payne, and the other was for twenty-two dollars and a half to the order of some house in New York. That is my recollection.

Q. Didn't you state— A. (Interrupting) No; I did not.

Q. Didn't you state a moment ago that you had two checks, one for twenty-five dollars and the other for ninety-five dollars? A. Not to my recollection.

Q. Will you send for your check book? I would like your check book covering June, 1904. A. For what purpose?

Q. I would like to look at the stub. A. You must remember that your friend, Payne, has had whatever checks and check books I have. I don't know whether I can find what you want or not.

Q. He has not your check book now? A. For all I know, he has; I have got to look it up.

Q. Are you serious about that? A. Absolutely. I told Mr. Ladd yesterday to look up my check books, and he says he only found the check book for a certain date. I don't know but what Payne stole the rest of them.

Q. Will you produce the check book of June, 1904? A. I will, if I can find it. Mr. Payne testifies that I produced two checks, which he admits he saw there. There is no difference between us on that. The only difference between us is that he says that one check of ninety-five dollars had been paid. I say I never claimed any such thing. That is the only difference between us.

BY MR. BARBER.

Q. You say that you never did make that claim in regard to these

checks? A. This is what happened: The committee sat down with me. There were two or three members of the Board—I think all were there. They said, or how I said: "How are we going to divide this furniture?" Mr. Payne said: "It belongs to the Commission." I said: "I don't think it does." I said: "My recollection is—it is five or six years ago—that I paid something on account of it. I have forgotten the amount." Mr. Payne said that I never paid anything. That is my recollection. The Commission then said: "We don't want to dispute about this. We will look into this." I then got out my checks and showed them what I paid. My recollection is that there were two checks—one for seventy-two dollars and one for twenty-five dollars. I showed them whatever I had; and on that showing we struck the agreement of the disposition of the furniture.

BY THE ATTORNEY-GENERAL.

Q. I want to ask you whether, in the presence of Commissioners McLoughlin and Cloke, you did not, on that occasion, claim that you had paid a check of ninety-five dollars and a check of seventy-two dollars and a half for furniture, and that you were entitled to reimbursement on that basis? A. That is not my recollection of it.

Q. Do you say that you did not? A. The first time I said I did not know what I had paid, and the—

Q. (Interrupting.) Didn't you have your check book in your hand? A. The second time I did.

Q. Didn't you have your check book in your hand, and didn't you claim that you had paid seventy-two dollars and a half and ninety-five dollars; and didn't Mr. Payne ask you to show your check book, and didn't you refuse? A. That is absolutely untrue, according to my recollection.

BY THE CHAIRMAN.

Q. When was this? A. Four or five months ago. The checks were six or seven years ago. My statement is explicit. I simply said to them that I was under the impression that I had paid something, and I got my books out and showed them. As for any photographs, and all that business, I don't think—

BY THE ATTORNEY-GENERAL.

Q. (Interrupting) Have you the book there? A. There is the ninty-five dollar check marked "Cancelled" there in my book, and the next is seventy-two dollars and fifty cents.

Q. You showed them the— A. (Interrupting) I showed them the check for seventy-two dollars and fifty cents.

Q. I want to know if you did not, with a check book in your hand, claim that you had paid ninety-five dollars? A. Now, you are right.

I might have claimed that I had paid ninety-five dollars, as I had; I had paid over ninety-five dollars; I had paid ninety-seven dollars.

Q. I want to know if you did not, with that check book in your hand in the presence of Commissioners Cloke and McLoughlin, make the claim that you had paid that check of ninety-five dollars and also that check of seventy-two dollars and a half? A. No, sir. What I did claim was that I had paid ninety-five dollars. It proved to be ninety-seven dollars and fifty cents.

Q. I show you a check dated February 2, 1906, signed John C. Payne to the order of Potts & Higgins, endorsed Potts & Higgins, George L. Record; a check dated March ,1906, signed John C. Payne, to the order of Potts & Higgins, endorsed Potts & Higgins; a check dated April 9, 1906, signed John C. Payne, to the order of Potts & Higgins, endorsed Potts & Higgins; a check dated May 7, 1906, signed John C. Payne, to the order of Potts & Higgins; endorsed Potts & Higgins, George L. Record; a check dated June 7, 1906, signed John C. Payne to the order of Potts & Higgins, endorsed by them and by you; a check dated July 5, 1906, signed John C. Payne, to the order of Potts & Higgins, endorsed by them and by you; and a check dated August 4, 1906, since this investigation commenced, signed John C. Payne, to the order of Potts & Higgins, and not endorsed by you. Did you receive the money on these checks that are endorsed by you? A. I assume I did.

Q. What are they for? A. Like everything that I do, I did it right out in the open.

Q. What are they for? A. They are for the rental of my rooms after the Riparian Commission moved.

Q. You said that you insisted that the Riparian Commission should leave your rooms? A. That is what I did.

Q. And that they could get rooms downstairs for fifty dollars? A. I didn't say that.

Q. Well, they could? A. They could not.

Q. Why, Potts & Higgins paid fifty dollars a month? A. Yes; but they could not get their rooms.

Q. You are sure of that? A. They would not get out on the street for them.

Q. Potts & Higgins were not paying more than fifty dollars? A. They were only paying fifty dollars a month, and they declined to come with me and pay more.

Q. So you insisted that these people, somehow or other, should pay part of your office rent, although you insisted that they should leave your office? A. Absolutely not. I said to them: "Get out of my office, the whole troop of you. I don't want anything to do

with you," They came back and said: "We may change with Potts and Higgins downstairs." I said: "If they will pay me sixty-five dollars a month, Potts and Higgins may have the rooms. I want you to get out."

Q. You wanted them to get out on your terms? A. On their own terms. They did not have to deal with me. Just get out—that is all they needed to do.

Q. Or pay you fifteen dollars— A. (Interrupting) No, sir; not a dollar; I never made any arrangement of the kind with them.

Q. Were you not informed of it afterwards? A. I had nothing to do with it.

Q. You supposed the State of New Jersey was doing it? A. Certainly.

Q. For what reason? A. Because they wanted to rent rooms.

Q. They were told to get out of your rooms? A. They went to Potts & Higgins. Potts & Higgins said to them: "We will go upstairs, but we don't want to pay more than fifty dollars a month. We cannot get other rooms for less than sixty-five dollars. If you want to pay us sixty-five dollars for our rooms, we will take Mr. Record's rooms." The Commission put that game through, and I accommodated them.

Q. You call that a "game?" A. I call that a business proposition.

Q. That the Commission and Mr. Payne, who were the only ones who needed rooms, should have to pay— A. It is not that at all.

Q. Isn't it? A. Not a bit. I have got three rooms. The Commission are out. I put them out. Those are my rooms. I can get twenty dollars or seventy-five dollars, or a hundred dollars, or any price that I choose to ask. Now, they say to me: "We want Potts & Higgins to come up here." I say to them: "They won't pay the money asked. If you will put them in the position where they can pay me, I will let them into my office"—a perfectly fair business proposition. They talked it over among themselves; and along came the checks. It was open and above board; right out in the open.

Q. You think that is an absolutely perfect, straight proposition? A. Absolutely perfectly straight and fair.

BY THE CHAIRMAN.

Q. At the beginning of your testimony you handed up to the chairman of this Committee what purports to be a copy of an affidavit, and also, I think, the original of that affidavit signed by John F. Odiorne. I will read the affidavit so that it will appear in the record:

STATE OF NEW JERSEY, } SS.
COUNTY OF HUDSON. }

JOHN F. ODIORNE, of full age, being duly sworn according to law, on his oath deposes and says : That he resides at Hackensack, in the county of Bergen and state of New Jersey ; that in the year nineteen hundred and one, this deponent was a member of the firm of Odiorne & Morse, deponent's partner being one Thomas W. Morse ; that deponent's firm at said time was engaged in the paper manufacturing business, with a plant fronting on the Hackensack river, near Little Ferry station of the New York, Susquehanna and Western Railroad company ; that in the month of May, nineteen hundred and one, or thereabouts, this deponent's firm made application to the Riparian Board, through its secretary, John C. Payne, for the riparian rights on deponent's firm's property ; that an application blank for said rights was signed and delivered to Mr. Payne as secretary, as aforesaid ; that in the month of July, A. D., 1901, this deponent's firm received certain deed from said Board granting riparian rights to deponent's firm a distance of fifty feet from original high water line on the south side, and seventy-three feet and six inches from said original high-water line on the north side ; that after receiving said grant deponent's said firm, to wit, in the spring of 1902, through deponent, called upon Mr. John C. Payne as secretary, as aforesaid, and requested additional grants to the low-water mark so far as said Board would grant same ; that deponent called upon said Payne at his office in Jersey City several times for said purpose, and said Payne also visited the property in question ; that after Payne had visited the property he advised this deponent that no further grants would be made, as the government lines were such that the Board couldn't grant any more ; that the said Payne insisted that nothing further could be done on several occasions, and Payne finally suggested that another Commissioner visit the property with him and look it over ; that thereupon a Commissioner, by the name of Holt, as far as deponent recollects, called with the said Payne and inspected the property ; that after such visit and inspection they both stated to deponent that no additional grant could be made. That thereupon deponent, at the suggestion of friends, called upon Mr. Edmund W. Wakelee, to represent his firm and endeavor to secure the grant for additional rights refused as above stated ; that in the latter part of October, 1902, Mr. Wakelee, Mr. Payne and one Commissioner, whose name I do not recollect, called and inspected the property, said call being made through an appointment made with Mr. Payne by Mr. Wakelee, after an inspection of the property; and

in the course of a few days deponent received word from Mr. Wakelee that he had made application for the grant of additional rights and enclosed his bill, in the sum of two hundred dollars, for his services in the matter.

Deponent further says that upon obtaining the original grant above stated he paid to the State of New Jersey the sum of about three hundred and eighty-eight dollars, and a counsel fee of ten dollars to Mr. George L. Record.

That in the early part of the month of November, A. D., 1902, deponent's firm received a grant through Mr. Wakelee for the additional rights, to wit, a distance of thirty-five feet on the southerly line and about eleven feet on the northerly line, and for which additional grant deponent paid no further moneys.

JOHN F. ODIORNE.

Sworn to and subscribed before me this 20th day of August, A. D., 1906.

AUGUST LEIGNER.

Attorney at Law Supreme Court of New Jersey.

Q. Why did you hand me that affidavit? A. I wanted to have the Commission ascertain the method by which riparian grants were made. I understand that, as I am here for that purpose. I thought you would enjoy that the same as I have enjoyed mine.

Q. Did you obtain this affidavit from Mr. Odiorne? A. I did not. I never saw Mr. Odiorne.

Q. Did you cause it to be obtained? A. I heard about it and supposed that if it could be obtained I would get it.

Q. Is it your suggestion that because my name appeared in the matter it would perhaps afford— A. (Interrupting) I have no purpose except the general purpose to show how these licenses are granted. We are trying to find out the facts.

BY SENATOR AVIS.

Q. What is there wrong in this? A. I charge nothing.

BY THE CHAIRMAN.

Q. What is there in this that shows how licenses are granted? A. Oh, I shall wait to see the Attorney-General, how he will get savagely at you and cross-examine you for a month.

BY SENATOR AVIS.

Q. What is the information that the Committee is to get out of this? A. What is the information that the Committee is to get out of my examination?

BY THE CHAIRMAN.

Q. Is the idea that you want to retaliate? A. I have no charge to make, except that there is a piece of information that I thought the Committee would like to have.

Q. Do you know what the frontage on this property was? A. No, I do not.

Q. Do you know what the areas were? A. No, I do not. The only idea is that the Senator got two hundred dollars and I got ten dollars.

Q. What did you get ten dollars for? A. I passed on the title.

Q. The title was furnished to you? A. Yes.

Q. By whom? A. I don't know; whoever furnished it I passed on it.

THE CHAIRMAN.—Inasmuch as this affidavit is introduced, for what purpose I don't know, I would like to be sworn.

EDMUND W. WAKELEE, sworn, and testifies as follows:

All I know about that grant is as follows: That this man, Odiorne, called at my office in the spring or early summer of 1902 and asked me about obtaining this riparian grant. I had several conferences with him about it and was loath somewhat to take the matter up as I knew nothing about the riparian business, had never appeared before the Board, did not know any member of the Board; and so finally I asked him to write me a letter setting forth what he desired, and under date of August 4th, 1902, this Mr. Odiorne wrote me the following letter, which I will ask to have incorporated in the minutes. It simply sets forth the grant. It shows what he wants of the Riparian Board.

Little Ferry, N. J., Aug. 4th, 1902.

MR. EDMUND W. WAKELEE,
New York, N. Y.

Dear, Sir:

Enclosed we hand you description of grant sketch of property, and description from our deed. Our desire is as follows: When getting in or shipping our merchandise or coal we wish to be able to state the depth of water we have at our dock. At the present time our grant does not extend to the medium low water mark and there is at least eight feet of bare ground between our line as granted and low water mark. What we want to do is to go out far enough so that we will have three or four feet of water at low tide. This can be done by going out about twenty feet further.

This, with the rise of the tide, will give us about eight feet at high tide, which would float in anything we might wish to have landed there. We do not think we would interfere in any way with what little traffic there is on the river. Above us there are two piers or docks on the narrowest part of the river which have at least three or four feet at low tide and at a point where the river is not more than one half as wide as where we are. These two points are the boat house on the Stratton property and the car trestle of Philip Mehrhof. The Mehrhof trestle was built about five years ago, the boat house I don't know when, but lately. We have located here and have gone to a great expense, and the payment we have made for the rights of the river do not seem to have been to any advantage to us unless we go to another expense of dredging, which would be very unsatisfactory as the channel would probably fill right up owing to the great flow the river has. We want to take advantage of tide water but are unable to do so if the Commissioners do not seem inclined to give us that depth of water along our entire front. We would perhaps be able to get along with the extension of for,say 75 feet from our northerly line or on the side of our property where the boiler room is and build a dock out there for twenty feet to get the depth needed, and leave the balance of the front, as it is not granted.

The enclosed letter from Mr. John C. Payne in reference to extension of line at southerly end of property. You will see, he says he might give us 25 feet more on that end, and it seems to us as if he might strain a point and give us 20 feet on the other end. Trusting we may hear favorably from your endeavors, we remain,

Yours very truly,

ODIORNE & MORSE CO.,

J. F. ODIORNE,

President.

I went away on my vacation. He called on me several times, and in my absence left his cards, which I find filed in my office with the papers in the case. Finally, after looking up the matter in the office of the Riparian Board, making appointment with Mr. Odiorne and visiting the property on the Hackensack river, I wrote Mr. Odiorne a letter. Perhaps I ought to say that I have sent to my office today to get these papers.

New York, Oct. 21st, 1902.

Gentlemen :

I have arranged for Mr. Payne and perhaps one or two members of the Riparian Committee to meet me at your place. It is desirious

that we be there at extreme low tide. We can go Friday forenoon or Monday. Will you let me know at once which will be the best time, whether or not if we left on the 8.30 train, Friday morning, would the tide be right ; if not, it will have to be Monday. As soon as I hear from you we will complete the arrangements.

Very truly yours,

(Signed) EDMUND W. WAKELEE,

ODIORNE & MORSE COMPANY,
Little Ferry,
New Jersey.

I received this reply :

Oct. 22, 1902.

MR. EDMUND W. WAKELEE,
New York, N. Y.

Dear Sir :

In reply to yours of the 21st, will say we will meet you here on Friday, a. m., on the arrival of the 8.30 train from New York, and also that the tide at that time will be favorable for an examination as it will be at extreme low about 9.30, one half hour after the arrival of train. Thanking you, we remain,

Yours very truly,
ODIORNE & MORSE CO.,
J. F. ODIORNE.

That was October 22nd. After that I had a conference with the Commission, and I remember that I made a formal application to the Board for this blank, and I wrote Mr. Odiorne on October 25th, 1902, the following letter :

New York, October 25th, 1902.

Gentlemen :

I have this day made application to the Riparian Commissioners for additional riparian rights, sufficient to make your entire grant eighty-five feet wide. I also herewith enclose my bill for services in this matter.

Very truly yours,
(Signed) EDMUND W. WAKELEE.

Messrs. Odiorne & Morse Co.,
Little Ferry,
New Jersey.

I would like the Committee to know that my bill was rendered

before the grant was made, in conformity with talks I had with Mr. Odiorne at his factory on the Hackensack river. That bill was rendered before the application went before the Commission.

A letter I received on October 27th from the Riparian Commission is as follows:

October 27th. 1902.

EDMUND W. WAKELEE, ESQ.,
Counselor-at-Law,
32 Liberty street,
N. Y. City.

Dear Senator:

I have your favor of the 25th inst., making application for Messrs. Odiorne & Morse Company for additional lands on the Hackensack river, and I will present the same to the Board at its next meeting on Thursday, and inform you what action is taken thereon.

Yours very respectfully,
JOHN C. PAYNE,
Secy. & Eng'r.

After the meeting on the following Thursday or under date of November 5th, 1902, Mr. Payne writes as follows:

Nov. 5th, 1902.

EDMUND W. WAKELEE, ESQ.,
Counselor-at-Law,
32 Liberty St.,
New York City.

Dear Sir:

I enclose herewith for delivery grant to John F. Odiorne and Thomas W. Morse of lands under water on the Hackensack River.

Yours very truly,
JOHN C. PAYNE,
Secy. & Eng'r.

The next day I wrote Mr. Payne as follows:

New York, November 6th, 1902.

MR. J. C. PAYNE,
Commercial Trust Co.,
Jersey City, N. J.

Dear Mr. Payne:

I acknowledge receipt of your favor of the 5th inst., enclosing

grant to Odiorne and Morse. I thank you very much for your courtesy in this matter.

With kind personal regards, I am,

Yours very truly,
EDMUND W. WAKELEE.

On the same day I wrote the following letter:

New York, November 5th, 1902.

ODIORNE, MORSE & CO.,
Little Ferry, N. J.

Gentlemen:

I have this day received grant of lands under water on the Hackensack River from the State by Riparian Commission, which I herewith enclose to you. I am,

Very truly,
EDMUND W. WAKELEE.

I saw Mr. Odiorne once after that and asked him to send me a check for his bill, which he promised to do, for the bill which I had rendered. After that Mr. Odiorne never called at my office. I met him once or twice on the street and once or twice in the railroad depot afterwards but he always studiously avoided me. The next I heard from him was in 1906, when I received a notice that a receiver had been appointed for the firm of Odiorne & Morse, that I appeared on the books as being a creditor of the firm and I was asked to put in my proof of claim. On the 15th day of January, 1906, I signed the following affidavit, which was filed with the receiver.

STATE OF NEW JERSEY, }
COUNTY OF BERGEN. } SS.

EDMUND W. WAKELEE, being duly sworn, deposes and says, that Odiorne & Morse Company, a corporation, is indebted to deponent in the sum of two hundred dollars for services rendered in the matter of procuring grant of riparian rights as specified in the annexed bill; that said sum is now justly due deponent and that no payment has been made thereon and that there are no offsets against the same to the knowledge of this deponent and that the same is not secured by any judgment or mortgage upon or expressly charged to the real estate of said company, or any part thereof, and that no note has been given for the same.

Sworn to and subscribed before me this 15th day of January, 1906.

February 15th, 1906, I received a letter from Charles W. Bell, as follows:

February 15th, 1906.

MESSRS. WAKELEE, THORNWALL & WRIGHT,
New York.

Dear Sirs:

Your proof of claim was duly received, acknowledgment of which I supposed had been sent. Please excuse

Yours very truly,
CHAS. W. BELL,
Receiver for
ODIORNE & MORSE CO.,
J. T. ODIORNE,
M'gr.

The statement in his affidavit that somebody advised him to go to my office and retain me I know nothing about. I did not know him.

I now state further that I never appeared before the Riparian Commission except in this case in which I received nothing, not even my expenses—and one other matter for a public dock for the Borough of Edgewater, which application is now pending. I am informed by Mr. Wright, my partner, that he has made one other application in the name of our firm, but that is a small matter; he attended to it and I don't know anything about it. These three matters are all that I have ever had anything to do with directly or indirectly before the Riparian Commission, and before I took up this matter I didn't know a single member of the Board; I did not know Mr. Record and I did not know Mr. Payne.

I believe that the affidavit was presented by Mr. Record for the purpose of injuring and reflecting on me, and I court the fullest investigation and I request the Committee to get to the bottom if there is any further bottom to it.

I am ready to be cross-examined by any one.

COMMISSIONER M'LAUGHLIN. Direct Examination by the Attorney General.

Q. I expect to call you later on a general subject, but I wish now to let you go today and examine you upon one particular, reserving the right to call you later. Do you remember being upon a Committee of the Board to confer with Mr. Record concerning the ownership or joint tenancy of the rooms that were occupied both by him and the Board in this building? A. I do.

Q. Who was the other member of that committee? A. Mr. Cloke.

Q. Do you remember a meeting at which Mr. Payne and Mr. Record were present when the claim was made by Mr. Record for some disbursements that he made? A. I do; yes, sir.

Q. Tell us what Mr. Record claimed. A. Well, Mr. Record made the claim that they paid a check of ninety-five dollars and Mr. Payne asked him to produce a check, and there was talk there between Mr. Payne and Mr. Record—one denying and the other asserting, and finally Mr. Record produced his check book and claimed that there was a stub for the check of ninety-five dollars; and I think at that time Mr. Payne asked Mr. Record if that check was not cancelled and another one given; and I think it was.

Q. What is that? A. I think the ninety-five dollar check was cancelled in the stub.

Q. Didn't Mr. Record show the stub? A. I think he did. I think I saw the stub of the check and it was marked "Cancelled" across the face of the stub.

Q. Did he show it to Mr. Payne. A. No, I don't think he did.

Q. Didn't he decline to show it to Payne? A. I think he did.

Q. When did you see it, later? A. When I saw it there at the meeting.

Q. Did he say that that was not cancelled and that that was not a good claim or did he— A. (Interrupting) I don't think that he claimed that. It was not claimed. But he claimed that he paid the ninety-five dollar check, as I understand it, and then afterwards said that he might have made a mistake or something to that effect; that he thought he had paid it, or that he had paid that check.

Q. When was that conversation? A. That was there at the meeting.

Q. What about this Potts & Higgins matter; what do you know about that? A. The Potts & Higgins lease, as I understand it, when we were told by Mr. Payne that we would have to secure new quarters, Mr. Payne went inquiring around the building to find out if it was possible to secure quarters; he came in contact with Potts & Higgins, as I understand it, and notified us, after one or two talks with them, that he could secure the Potts & Higgins lease, and could secure it at $50.00 a month, the same as they were paying, and I think that we instructed Mr. Payne to go ahead and make whatever arrangements he could with Potts & Higgins, and I think later on Mr. Payne informed us that he could secure that lease with Potts & Higgins. Later on, in talking the matter over with Mr. Record I think Mr. Record was informed that we could get Potts & Higgins lease; and in a conversation with Mr. Record, as I remember it, he informed me that we could not have Potts &

Higgins lease for $50.00 a month ; that he had the call on these rooms as Potts & Higgins were coming with him and he had practically the ownership of the lease and the re-letting of their quarters and that we would have to pay $65.00 a month for them.

MR. RECORD.—Could I have just a word with Mr. McLaughlin ?

MR. WAKELEE—If you state any question to the Attorney-General, I have no doubt he will put it to the witness. I don't think we can permit the cross examination of the witness. We make an exception in your favor with Mr. Payne and that is all we can do.

MR. RECORD—I am perfectly willing.

MR. RECORD—(To the Attorney-General) Will you ask the gentleman if I made any claim that I paid $95.00 and a $75.00 check in addition.

Q. Mr. Record wants to know if he made any claim that he had paid both a $95.00 check and a $72.50 check ? A. My recollection is that Mr. Record claimed to have paid the $95.00 and some other check. Now, the amount of that other check I do not know. I think there were two checks in question and the dispute arose about the $95.00 check.

MR. RECORD—Ask him whether I ever refused to show him any check or check book.

Q. Mr. Record wants to know if he ever refused to show you any checks or check book ? A. No, I don't think he refused to show me.

BY MR. BARBER.

Q. Did you ever ask Mr. Record to show you his checks or check book ? A. Why, no ; I didn't ask him to show me.

MR. JOHN C. PAYNE, a witness already sworn and examined before the Commission, recalled for the purpose of cross-examination by Mr. George L. Record.

MR. RECORD.—I would like to be heard on this question of adjournment. I say that this Commission cannot adjourn and go on from weeks to weeks. Let us get at this Goetschius business, if it takes all summer. What is at the bottom of that proposition ? I want to find out. I am willing to come here tomorrow and next day, and all summer. I say let us go on.

MR. McCARTER.—I am not ready. I have not had a day's vacation this summer, and I propose to get some if I can. I have come here today at great inconvenience, to do two things : First, to give Mr. Record an opportunity to be heard ; and secondly, that Mr. Payne might be submitted to cross-examination.

MR. RECORD.—I don't insist that I go on with Mr. Payne for the purpose of getting through to-night. My purpose is that this Committee do not rise until I get through with Mr. Payne.

THE CHAIRMAN.—The Committee will proceed with the cross-examination of Mr. Payne, and will not decide the other points until we get to them.

I think it only fair that we should have from Mr. Record some expression as to the extent of the cross-examination. I do not feel that the privilege extended to Mr. Record to cross-examine Mr. Payne covers all his testimony. Mr. Record thinks that he has been reflected upon in some way, and as I understand him, his desire is to cross-examine Mr. Payne upon matters that are connected in any shape, manner or form with Mr. Record. Is that your understanding, Mr. Record?

MR. RECORD.—That is not my understanding. My understanding is that I am going to cross-examine Mr. Payne. You must not shut me off.

THE CHAIRMAN.—I think there ought to be a general line laid down by the Committee.

SENATOR MINTURN.—By cross-examination, do you understand an examination on those matters that he testified to the other day?

MR. RECORD.—I want to examine him upon the subject-matters that he has been examined on.

SENATOR MINTURN.—Very well.

MR. RECORD.—I would like, in the first place, to have a look at these photographed checks.

THE ATTORNEY-GENERAL.—I guess I have got it here. (Produces paper and hands it to Mr. Record.)

CROSS EXAMINATION BY MR. RECORD.

Q. Did you make that photographed check? A. I did.

Q. When did you make it? A. After the meeting of the Committee appointed by the Riparian Commission to confer with you on the subject of the disposition of the furniture of the Riparian Commissioner's office.

Q. Where did you find the check? A. In a drawer in a table that belongs to the Riparian Commission, in the room used by the Riparian Commission as a meeting room.

Q. Were there any other riparian papers in the drawer? A. I think very likely there were not.

Q. Don't you know that there was not? A. No; I don't know.

Q. What riparian paper was in any part of the room I occupied as an office, at any time? A. On the wall of the room that you occupied for twenty-four days out of the month, or that you occupied with the exception of the one day that the Riparian Commission met in it—was an oil painting of a plan of the Riparian Commission to establish a series of islands down the bay. On the other wall was a map of the lower part of the city of New York, showing the original lines at high water. On the small table were a number of copies of the laws of the state of New Jersey, with the Riparian Commission's name on the back of them. On the large table—

Q. Was anything in the drawer? A. Beg pardon. I am answering your question.

Q. Was anything in the drawer? A. On the large table that belonged to the Riparian Commission, that you used, as I have said, there were a number of cases that referred to the Riparian Commission; there were a number of—

Q. (Interrupting.) Name one of them. A. There were a number of grants, the names of which I do not remomber—grants that were placed there for the only supervision, and the only work that you ever exercised—

Q. (Interrupting.) I want to know what papers were habitually in that office. A. I am answering a question. On the table that belonged to the Riparian Commission, that you used, were a number of grants that were put there for the only purpose that grants are ever put there—for your simple acknowledgment of my having witnessed the signature of the Board. Those are the only papers in detail that belonged to the Riparian Commission. That I am—

Q. (Interrupting.) There was nothing in any drawer belonging to the Riparian Commission? A. I did not examine any other drawer in that table that belonged to the Riparian Commission, and so cannot say.

Q. You kept no papers there, in any of those drawers that you now refer to? A. No, sir.

Q. What time of the day did you get this check book? A. I must have gotten it some time between nine and ten in the morning and four and five in the evening, because those were the hours of the office.

Q. Was I there? A. I don't think you were.

Q. The check was not in the check book, was it? A. I beg your pardon.

Q. The check was not in the check book? A. What check?

Q. The check that you photographed? A. Yes, sir; it was; and I

will tell you why. It was there at the time of the first meeting of this Committee.

Q. I want to know whether it was there? A. It was there.

Q. You took the check book and the check—two checks or one check, whichever it is— A. (Interrupting) One check.

Q. And where did you take it to? A. Home.

Q. You took it home? A. Yes, sir.

Q. What time of day? A. I should judge I took it home when I went home in the afternoon or evening, and I should say my recollection is that I took it home on a Saturday or Friday, because I photographed it on the Sabbath, because that is the best day to photograph on. You can do it in the middle of the day and get the benefit of the light.

Q. You photographed it at home? A. I did.

Q. What did you do then? A. I developed the negative and had it printed.

Q. What did you do with the check after that? A. I returned it to the drawer that I took it from.

Q. Also, when I was not present, I presume. A. I think that is quite likely. I had a great deal of regard for you.

Q. Why did you steal this check out of my drawer? A. Without noticing the form of your question, and without admitting that it was stealing, I will answer the question as though it were presented in this way—"Why did you take my check book out of my drawer?" In answer to that, I will say it was not your drawer. It was a drawer in a table belonging to the Riparian Commission. I will say that I took it because at the first meeting of the Committee at which Mr. Cloke and Mr. McLoughlin were present, you claimed that—you sat with a book in your lap—and first you claimed that you had no opportunity to look up your accounts. Now, a week or two before you had a letter from Mr. Cloke, which is embodied in a report to the Commission, saying that the Committee to whom the matter of the adjustment of the furniture was referred, will be at the office on such a day, which was a week in advance—

Q. (Interrupting) Let me save you time. You did this in order to meet my claim on the furniture. A. Let me answer the question. I insist on it.

MR. RECORD—I don't want all of this. What I want to simply get from him is this—if you did this, if it was done in order to answer my claim on the furniture? The rest of this you can have, if you want. I only want him to answer my question.

THE CHAIRMAN—The Committee gave you every latitude.

A. (Continuing) I want to show why I photographed this check.

Commissioner Cloke wrote this letter to Mr. Record about a week before, and it was for him to get all the vouchers he could find in the office. The clerk in the office looked for the vouchers in the books of about the date of the transaction. Knowing what she was looking for, I said—" You will not find any voucher there. You will find a check stub of such a date in the check book." She looked and found the check stub for $95.00. She came to me with it; it was not supposed that there was anything to be hidden about it, and she said, " I found the check stub. It is cancelled." I said—" Look a little further, and you will find a check stub for $72.50."

Q. Do you mean to say that she went to you— A. (Interrupting) The clerk did—the clerk that was used in common by both the Riparian Commission and you. You gave that letter to that clerk, and she showed it to me. I had no suspicion that you were trying to hide anything. She looked for the account. I said—" Look a little further on and you will find a check for $72.50." I had no thought, as I was saying, that there would be any claim on your part for the $95.00 check, and when you appeared at this first meeting of the Committee, you sat with your check book in your lap, and you said: " My check book shows that I paid Mr. Payne $95.00 and $72.50." I said " Your check book does not show anything of the kind. Just show it to the Committee and let them see it." You said you would not do it. I said " Why don't you show the Committee your check book," and you said " That's my business."

Q. Mr. McLaughlin does not agree with you on that. A. Mr. McLaughlin has forgotten a little. Mr. McLaughlin is kind to you. That was first, and the discussion of the furniture went on and was settled, as the minutes of the meeting will show, as the Attorney-General has read. I had no idea that you would claim that $95.00 check. It was then that I took the check book out and photographed it, because I thought that I had an untruthful man to deal with. Two days before the Commission were to move, Mr. Cloke being at the office, Mr. Record said that he had difficulty in finding a desk to match the faded condition of the carpet. He was always aesthetic. Now then—

Q. (Interrupting) Why did you do it? A. To controvert your untruthfulness.

Q. That is the reason why you took out of this drawer my check book? A. I certainly did.

Q. You did? A. Yes.

Q. That you knew to be my check book? A. I certainly did, although the account was one that concerned the Ripariarn Commission.

Q. You knew that was my personal property? A. The account was one that concerned the Riparian Commission.

Q. You knew that check book was my personal property? A. Yes, sir.

Q. You took it home and kept it there? A. Yes, sir.

Q. And had a chance to go over it and look all through it? A. I did, but I was not interested.

Q. You took my property out of my office and lugged it up to your home? A. I would not use the word "lugged", but I took it home. Let it go at that.

Q. You did that in order to prevent the Commissioners from having an unjust claim to the extent of $95.00 to pay to me? A. That is what I did; that is it exactly.

Q. Let that stand just there for the present. Did you steal any of my papers or documents?

ATTORNEY-GENERAL—I object to that.

THE WITNESS.—Don't object to that. You all know Mr. Record and you have seen the exhibition he has made of himself today.

SENATOR WAKELEE.—How is that of any concern?

MR. RECORD.—I want to discredit the witness. He has admitted that he is a thief, in one respect. I want to show other instances.

SENATOR MINTURN.—If he admits that he is a thief, what is the use of proving it? It is only taking time. For the purpose of your case, he admits it is so.

MR. RECORD.—The point is this—that you are obliged to make up a report for the Legislature, based in part upon this man's testimony. Now, if I can show that he has taken my private papers, that will discredit him and certainly should have some bearing on the credence to be given his testimony.

Q. Did you ever steal any other of my papers or documents, or did you ever take them unknwn to me and send them to other people? A. I will say that the testimony that I gave before this Legislative Committee is in obedience to a resolution of the Board.

Q. Why not say whether you have taken my papers; did you ever take any other papers of mine unknown to me and send them to my enemies? A. I refuse to answer that question except in this way—

MR. RECORD.—I ask the witness if he has ever taken any of my papers and sent them to my enemies?

SENATOR AVIS.—Has it anything to do with the riparian investigation?

MR. RECORD.—It injures his credibility as a witness.

THE CHAIRMAN.—What part of the testimony is dependent upon Mr. Payne's testimony?

SENATOR AVIS.—I don't think the question is relevant.

SENATOR MINTURN.—I think it can be answered by "yes" or "no."

Q. You decline to answer on the ground that it will incriminate you? A. No, Mr. Carey, I don't.

MR. BARBER—It seems that Mr. Payne wants to follow the course that Mr. Record pursued in his examination and answer questions at length.

MR. RECORD—That is always an appeal to my sense of fairness and I am willing that you should make all the explanation he wants, but what I want him to say is whether he took any other of my papers. That admits of an answer "yes" or "no." After that he can explain.

MR. BARBER—It seems to me that there is evidently personal enmity existing between you and Mr. Payne. It seems to me that you are going into that.

MR. RECORD—If I established before this Committee that this man has stolen my papers and sent them to the Attorney-General, to Sam Dickinson, and to all my political enemies, does that not operate to discredit him in any testimony that he may give?

I am perfectly willing to answer any question. I want to continue as I began. That the testimony that I have given before this Legislative Committee is in obedience to the resolution of the Riparian Commission, instructing me to give the Committee all the information in my power relating to riparian matters. That I have done. All the testimony that I have given before this Committee has been from the files of the office and I am very glad and willing to give it.

Q. Was this from the files of the office? A. Yes, and as to any personal matter between Mr. Record and myself, I would have to explain what the situation of the Riparian Commission was in that office, before answering which I will, categorically, answer any questions that he may ask—to show the Committee just what the situation was. When the new Commission came into office, they desired that they should have an office to themselves.

MR. RECORD.—What is the resolution under which this Board sits? Supposing the Riparian Commission has in its employ a person who steals papers right straight along—

SENATOR AVIS.—I think you have to show that he stole from the Riparian Commission.

MR. RECORD.—It would have no bearing in your personal consideration. I am asking whether he stole my papers.

THE CHAIRMAN.—Mr. Record is only before this Committee for the personal matter of vindicating himself and answering the charges that he believes have been made against him. I do not intend to sit and listen to this character of cross-examination to please the gallery or please Mr. Record, or anybody else. Mr. Record has been given the privilege of appearing before this Committee for the purpose of cross-examining Mr. Payne upon the statements that Mr. Payne testified to with reference to Mr. Record, and I don't think Mr. Record has any standing to object, or to compel or to bulldoze the Committee and I am not going to stand for any of it.

MR. RECORD.—In the midst of this testimony, Mr. Payne insisted that he testify from the records. He has testified that I said to him that I had no conscience about these matters, and that I made a lot of remarks of various kinds which run all through his testimony which have nothing to do with the records. He testifies that he gave advice when the records don't show that he did. Therefore, Mr. McCarter has been trying to show that I did give advice depending upon this man's testimony. If I can discredit him, that falls by the way-side.

SENATOR AVIS.—Our ruling is that you should confine yourself to riparian matters.

MR. RECORD.—That is a riparian matter.

SENATOR AVIS.—I think the question ought to be ruled out.

MR. RECORD.—I demand an answer to the question. I ask the simple question—"Has that man taken, without my knowledge, papers that belong to me?"

MR. HOLCOMBE.—We are wasting a lot of valuable time. Mr. Record says that he can weaken the testimony of the witness on the stand by proving that he has taken some of Mr. Record's papers. I think we should listen and be as patient to the testimony from Mr. Payne as we were patient in listening to his testimony. He persisted in giving his testimony this morning. Even when he was interrupted, he continued and managed to make some sort of an answer. I am here at great inconvenience today. I thought out of all fairness to Mr. Record that I should come and listen to what he had to say. I move that the question be answered.

THE WITNESS.—To simplify and shorten, for the convenience of the committee, I will say that any testimony reflecting on Mr. Record's administration of the Riparian Commission, has been un-

avoidable, and this question does not in any way appear to me of bearing upon Riparian Commission business. I was placed in an enforced association with Mr. Record. Mr. Record was abusing the Governor and others. The Attorney-General is the legal adviser of the Board. The State Treasurer is the officer to whom we report. Mr. Record was abusing all these members of the Board. He was using the office in such a way that it could not very well be used for the purposes of the Riparian Commission, and I assumed the position that I was entitled to assist my friends in any way I could. If there is any way that Mr. Record can prove that I did anything that was of assistance to my friends, I shall feel obliged to him for questioning me.

Q. Did you collect my papers and send them to Governor Stokes? A. I am sure that there was one time that there was a newspaper article came out giving a statement of yours or Mayor Fagan's views with relation to Governor Stokes. The office was pretty thoroughly permeated with your work. This particular paper that you speak of, that Mr. Carey can corroborate you in—that was on my drawing board, and I had to push that aside, but I could not push your voice aside. It very often interfered with the work of the office, but that paper was there, and after the newspaper article was out I found it, and sent that newspaper article to the Governor.

Q. That newspaper article? A. Yes, sir.

Q. Whose property was the paper? A. Well, I—

Q. Whose property was the paper? A. Mine. I bought it for two cents.

Q. I mean the paper that you found on your drawing board? A. Well, I should say technically that, being on my drawing board, it might be considered as being my paper. But I suppose it was your paper.

Q. You suppose it was my paper? A. I know it was.

Q. How did it get there? A. I am blessed if I know, for you scattered your speeches and papers so generously about the place that I could not tell. I suppose on one occasion, as you very often did, you started up and gave us the benefit of your orations, and when you got through with that paper you laid it down.

Q. At any rate, you supposed it was laid there either by me or by the clerk acting for me? A. I can save all further time by saying that I took it without caring how it got there.

Q. You included that with the newspaper article, and you sent them off? A. To Governor Stokes? Yes.

Q. Why did you send the paper to Governor Stokes with the

newspaper article? A. To show that the newspaper article was different from the written article.

Q. There were things in the written article that did not appear in the newspaper article? A. That is the point exactly.

Q. How did you know? A. Because I read them both.

Q. Then you took a piece of my private composition, read it and ascertained that it pertained to politics and sent it to Governor Stokes? A. I did.

Q. Did you tell Governor Stokes that you sent that to him? A. I did.

Q. Do you remember that the article in the newspaper did not contain any mention of Governor Stokes, and that the article that you sent to him in typewriting contained a reference to Governor Stokes?

SENATOR AVIS.—How is that pertinent?

MR. RECORD.—I want to find out what his motive was.

THE CHAIRMAN.—He has admitted that he took it and sent it.

A. I heard so much of your statements to everybody and on all these political subjects that it is impossible for me to remember but very few. I can remember some which struck me as extremely ludicrous, but I cannot say that I remember what that blessed article was about.

Q. Did you take a paper addressed to Senator Colby—Everett Colby, and send it to the Honorable Thomas N. McCarter? A. I did not.

Q. You deny that? A. When I say that I did not, that means a denial.

Q. Did you know that such a paper was taken out of my office and sent to him? A. I did not.

Q. Did you take a paper out of my office that had to do with Sam Dickinson, and send it to him? A. I did not.

Q. Do you know how either of those papers got out of my office, and reached those gentlemen? A. I would like to say, generally, in answer to that question—it is a question that I think the Committee will be interested to hear—how did I know that that paper got away. Mr. Record was dictating Fagan's speeches, Colby's speeches, his own speeches, the whole business the whole time. He was having stenographers in there constantly, and sometimes it was a stenographer two-thirds of whose salary was paid by the Riparian Commission. It was very difficult for me to get her to do anything for me because of your activity, and I remember Mr. Ransom rushing around for a stenographer to write something. Then as to Mr. Record, when dictating sometimes, he would have these secret con-

ferences, of which there were a great many, and I used to, when I took more care of his affairs than I did toward the last—I used to come down the hall and I would go to the door and I would say to him "Are you holding a secret conference?" and he would say "Yes", and I would then tell him that the tenants in the lower part of the hall were talking about the noise. I only state that to illustrate how difficult it is for me to tell you how your papers got away.

Q. The tenants down the hall have not stolen anything, have they? A. That is a gratuitous little fling that you are welcome to.

Q. I ask you if you know how those two documents reached those two men? A. N-O. No.

Q. You consider that it was your duty to the Commission to protect them by bringing to their knowledge things which would guide them in the proper conduct of the State's business; did you not? A. Will you please repeat that question?

Q. You consider that it was your duty to bring to the Riparian Commission information in reference to state matters which would guide them in the conduct of their business? A. I did, and I did it indefatigably, and I did it in spite of the opposition of some members of the Board.

Q. Let us take up the question of the fees. Did you get half of those fees? A. I certainly did.

Q. Why did you? Q. Because it was a little private game of yours, and your explanation of it was—your explanation of the whole riparian administration was this—that the damned thing would go up some time. That was the state of mind that existed. Years ago—you must realize the manner of my beginning with the Board in 1872. The first time I met Mr. Record was when we were down in the Fuller Building, and then he had begun to dominate Mr. Bacot, and they together ran the Board, and then ran the Riparian Board as a little annex to the Bacot and Record business. I always did the work. I left the rest to them. I understood they managed the Commission. Mr. Record used to say he controlled the Legislature. I knew nothing about those things. I was a simple engineer doing the engineering work of the Commission. Our relations had been such—Mr. Bacot, Sr., and I, that all the time that he was drawing $5,000 a year salary, I had $1,500 for doing the work; Mr. Bacot felt grateful to me, but I never got any more. Mr. Bacot, by reason of his good standing in the community, was able to bring into you a great deal of business—the best paying business you ever had—and better paying than you have now. The Riparian Commission business was worked as a kind of side issue

that was to be kept covered. If anything was said about the Riparian Board you said "Keep it shady, because it will be abolished." I said to Mr. Bacot one day, I said, "You fellows are working this thing pretty hard. I am paying office expenses, and I am going to make a move to have the Commission recognize them," and he went and had a talk with Mr. Record, and Mr. Record said "Don't make any fuss about this. I will divide my fees with you," and he did like a little man on down to the time he was deposed from his office.

Q. Did you tell Attorney-General McCarter when you were preparing this case, that you divided those fees with me? A. Yes, sir; and he said "We will keep still about that, because, you know, Mr. Record is a very elusive man and he may deny that he received these fees. Let us see what he has to say about it." Yes, I told him—that's the answer.

Q. The Attorney-General said to keep from this Committee the fact that you had— A. (Interrupting) No, sir.

Q. Did you tell this Committee? A. No, sir; because the time had not arrived for it. You had not started to cross-examine me on the testimony given, and the time was not ripe, because you had not appeared before the Committee. You see, our little game would not have worked.

Q. Then you were gunning for me, were you—you and the Attorney-General? A. I was gunning for the truth.

Q. You were gunning for me? A. I was gunning for the truth, and you were only an incident in the work of the Legislative Committee examining into riparian matters, and they will go further, and all the rest of the gentlemen whose records appear in the transactions of the Board will be questioned.

Q. These fees have been divided from 1893? A. 1897. I have a little list that will save you some questioning.

Q. Do you admit that they were divided down to 1904, or whatever time you say? A. June 23rd, 1904, was the last check you paid me.

Q. What was the first one? A. The first one was June 4th, 1897.

Q. I have a check here in July, 1904. A. Your books show check paid to me?

Q. Yes. A. Then I admit it.

Q. What I am trying to get at is whether from the year 1893, when my books show that I began these payments, down to 1904, when I ceased to be a member— A. (Interrupting) Ceased to be counsel.

Q. (Continuing) During all the time that we divided these fees, you never told the Board anything about them? A. I never did.

Q. Did you think it was wrong? A. I thought it was a little private graft of yours.

Q. What do you mean by the word "graft?" A. You know what it means.

Q. Then you use the word in the same sense that it is generally used? A. I thought it was a little game of yours. I was getting half of it in payment of work actually performed in pursuance of the arrangement that I was not to make any fuss and that I was getting paid for the expense that I paid.

Q. You said that you thought it was a little private graft of mine and yet you stood by for fifteen years and never told the Board? A. That is right; I never "blowed" on you.

Q. You never told the Commission? A. I never told them a word about it.

MR. RECORD.—It will be interesting to note a report of the Commission with that statement on the record.

Q. How often did the Board meet on an average? A. Well, on an average about twelve meetings a year.

Q. Then when you say that they sometimes met every week, what do you mean by that? A. Where did I say that?

Q. I don't remember where you did say it. Did you or did you not? A. I did say that sometimes this present Board met once a week.

Q. How often does the Board meet—the last Thursday in every month—is that true? A. That is true now.

Q. Did it used to be true? A. No, it didn't, because—

Q. (Interrupting) I want to know did it used to be so? A. No, it didn't.

Q. Now, when these fees were paid, the bill was sent and mention was made of them in letters in which the decision in the grant or lease was mentioned? A. Yes, sir.

Q. They were sent out on riparian paper? A. Yes, and appear in the letter book of the Board.

Q. They are recorded in the letter book of the Board? A. Every letter.

Q. They were sent to the applicant by you? A. Yes, exactly.

Q. And the money was received by you and handed to me? A. And handed to you.

Q. I never asked you to conceal from the applicant the fact that I got this money, did I? A. As to that, Mr. Record, I will say that

the practice was when I was going to send notice to the grantee that his grant was ready, you would come in and I would say to you, "Mr. Record, what are you going to charge in this matter," and you would say "Oh, ten" or "fifteen" or "twenty-five" or "fifty"—whatever you wanted to charge.

Q. Hold on, didnt you say whatever represented the work we had to do on it? A. No, because there was not any work that we had put upon it. You didn't do anything.

Q. Why did we make some ten and some fifty? A. That is the wonder in my mind, as to why you should make a difference in the charge when you didn't do any work.

Q. Why didn't we charge the same in all cases? A. It was your charge.

Q. Then, why didn't I charge the same in all cases? A. The reason was when you charged twenty-five dollars or fifty dollars, why, you had a good fat concern who would stand it.

Q. Was it not a fact that we had unusual trouble when the higher charges were made? A. There was never any trouble because you never saw the abstract, and in one hundred and fifty cases there was no abstract, and it was absolutely a farce—your whole course.

Q. You say the grants were made without any abstract? A. Yes, at first—I said to you in the first place—after a while—a long time had gone and no certificates were filed; I said to you one time "Look here, sometime you will get in trouble if you don't file your certificates." You had a young woman clerk—a lawyer—and she sat down in front of the filing cases where the grants were kept and she sat down in front of that filing case with a fountain pen and she wrote off these fourteen certificates.

Q. Who told her to do that? A. You did. She was not my clerk. She was your clerk. Then I found that you were not bothering about the abstracts, and I finally gave up paying any attention to that.

Q. You allowed grants to go through without any writing as to whether the title was straight or not? A. I only—

Q. (Interrupting) Did you? A. Excuse me. You must not talk to me that way, because it is disconcerting. I allowed the grants to issue in the first place, because it was a farce—

Q. (Interrupting) Did you allow grants to issue without my having stated that the title was all right? A. Yes, sir; I did.

BY SENATOR MINTURN.

Q. Is it a fact that grants have been made without any efforts to

ascertain whether the applicant was the owner of the ripa? A. The statement is correct that the Attorney-General asked me regarding the statement that Mr. Record charged for fees in three hundred and forty-two cases, the average charge for which was forty dollars a case. In all of those three hundred and forty-two cases, there were but fourteen certificates. There were one hundred and sixty-eight abstracts, and applications without abstract at all, one hundred and seventy-four, and all of these three hundred and forty-two grants were delivered without any certificate from the attorney of the Board that the applicant was the owner of the upland. My position in that was this—I did what I could. Mr. Record is a very hard man to control. I said to him, as I say to you all about furnishing these certificates when I say it was a farce, and as I talked to Mr. Record about it—there was a clause in the grant that the grant was inoperative. I looked into the matter and found that the grant was inoperative without the certificate, and when I found that it caused as much delay as it did to get Mr. Record's certificates, as it was under the old practise, I made up the grants. Mr. Record's statements in the paper that he helped me with the description is untrue. It is absurd. He is not an engineer, and I am a good one. I made up the grants and maps, and all that he saw of these grants was when I placed them on the table for him to sign his name to my acknowledgment that I had seen the Governor sign them.

Q. Is that what you mean? A. Yes.

BY THE CHAIRMAN.

Q. What was the course of procedure in those one hundred and some odd cases where the abstracts were furnished? A. As I said, in the early stages of Mr. Record's domination of the office in that way I would wait for a certificate. When I found that I did not get it—I think Mr. Record will agree with me—those matters went "by the board."

MR. RECORD.—I won't agree with you. I deny it.

A. (Continuing) Those matters were delayed, and I fell into the habit of going ahead with the drawing of the papers, and completing the grants without waiting for his certificate.

BY MR. RECORD.

Q. Did the Board know that you were doing this sort of thing without any certificate or statement from me? A. I don't know what you told the Board about your duties.

Q. Did you tell the Board? A. No, I did not complain about you because I thought it was a matter that you were solely interested in.

You were the counsel of the Board, and the Board were relying on you.

Q. You saw the grants? A. They were placed before you, and if I had not examined the abstract it was your duty to say so. It was your duty to hold them back.

Q. Independently of the grant to an applicant— A. (Interrupting) No, sir; that was not your business; that was my business.

Q. Is there any opinion filed in the Donahue grant? A. No, sir.

Q. There is no opinion filed? A. No, sir; there is no opinion filed.

Q. When the Goetschius grant came up you stated in your testimony that you told Mr. Babbitt that it ought to be fifty dollars a foot. Is that right? A. I told him that was the law.

Q. Did you tell the Commission that that was the law? A. I was not the legal adviser and I told them nothing.

Q. I asked you if you did tell? A. I did not, because I thought that my reading of the law might be faulty.

Q. Did you know when the Goetschius grant went through that there had been a previous riparian lease executed upon the property in question? A. Yes, because that was one of the cases you had in course of prosecution sometime before, and I had made some maps for you. I drew some diagrams. It was a perfectly familiar case to me—the Haws case.

Q. What was the date of the Goetschius grant? A. I shall have to refer to the record.

Q. Was it in 1901 or thereabouts? A. You cannot help me. You will have to refer to the record.

Q. My recollection is that it was in 1901, and the Haws case was the case in which I appeared some eleven years before that. A. I think quite likely it was. Oh, yes, it was quite some time before that.

Q. In the Goetschius grant, when it was made out and went through, that grant took the usual course?

THE ATTORNEY-GENERAL.—I refer counsel and the witness to the original papers in that very suit, with a report signed by S. Meredith Dickinson as Master, and George L. Record as Solicitor. It appears to be dated in 1896. This is a Master's report.

MR. RECORD.—That is of no importance. The suit itself is pending yet.

A. (Continuing) I don't remember when the Haws suit was brought.

Q. It was years before? A. Yes, it was years before.

Q. In the Goetschius grant, it was made by you in the manner

that you have just now described. Was it? A. The Goetschius grant was made in the same manner as all other grants were made.

Q. Did you call the attention of the Commission to the fact that there had been a previous riparian grant upon it or lease? A. I did not. I had no such thought of any such papers.

Q. Did you know that there was such a lease? A. I, of course knew that there was a lease that you had—

Q. (Interrupting) Did you know that there was riparian rental due on the lease? A. I did, and I knew that you had had that matter in your hands, and I supposed that you saw that the State was properly protected, and that you would see that the State's interests were properly looked after.

Q. You did not call the attention of the Board to the fact that there was a previous grant on it? A. I had no right to do so, and I did not do so.

Q. You had the records, didn't you, in your technical possession? A. The records of the office are there.

Q. Did you call my attention to that fact? A. I never called your attention to any matter that you were examining legally. That was not my business—not because I did not want to.

Q. Where did you get the letters from myself to Senator Johnson? A. They were furnished to me by the attorney for Mr. Goetschius when he presented his application.

Q. They were taken from the papers? A. They have been part of the files since until I looked them up for the purpose of this application.

Q. Where is the Goetschius application? Is it here? A. The Goetschius application the Attorney General has on his table. He put it there.

Q. There seems to have been a misunderstanding as to what the witness said. Did you say that you knew at the time that the Goetschius lease went through that there was an outstanding lease on which there was a great amount of rentals due? A. I knew that in 1874, as was known by everybody in the office, there was an Annett lease. I knew that there was some legal proceedings. I did not know what the status of those were, but you had the case, and I supposed you knew about it.

Q. How did you know that I had the case? A. Because I made some maps for you in the past case.

Q. A long while before? A. My memory is very good for those details.

Q. At the time the Goetschius grant was made, did you know that there was an outstanding lease on which there was rental

due? A. I positively did not know the status of that case, and I supposed that you were perfectly familiar with it. I did not know what the status of the case was.

Q. You knew that there were leases on that property? Is that so? A. Yes.

Q. You did not know whether they had been cancelled? A. did not.

Q. Or disappeared? A. I did not.

Q. Or anything about them? A. I did not. I did not know what the status of the leases were?

Q. You did not call the attention of the Board to the fact? A. It is not my business to call the attention of the Board to such facts.

Q. You did not do it? What is the fact about it? A. It is the fact that it is not my business, and not being my business, I did not do it.

Q. Let us take up the question of this Edgewater property. In your testimony on page 125, I find this entry:

"Q. Did you recall any reason why the application was first presented by Mr. Von Moschzisker? A. It appears that Mr. Von Moschzisker was the land agent of the Erie Railroad Company."

A. I did not know. Mr. Von Moschzisker asked what I thought it would cost, and I told him I did not know, but I said "I should think it ought to cost forty or fifty thousand dollars" and the next thing I knew it appeared in the hands of Mr. Babbitt, the gentleman who carried through the Goetschius matter.

Q. What did you mean by saying "The suggestion was that the application coming from the Erie Railroad Company would excite comment and the Commission would be likely to charge a much higher price than if it were not so pretentious an organization back of it." What did you mean by that? A. I meant that if the Commission knew that it was the Erie Railroad that was getting the grant—

Q. (Interrupting) They would charge more? A. They would charge more.

Q. Did you make that suggestion? A. To the Commission?

Q. To the applicant? A. No, sir.

Q. Did the applicant make it to you? A. No, sir. My recollection is that when I said it would cost forty or fifty thousand dollars, this Mr. Von Moschzisker said he thought that was because they were a rich corporation and they would soak them. That was the suggestion.

Q. He changed it to another name? A. It was changed to another name.

Q. Why was it changed to another name? A. I imagine to relieve it of that danger of being presented by a large corporation.

Q. How did the change of the name relieve it from that danger when you knew the original corporation? A. It didn't; it didn't relieve it. I was amazed when the Board fixed $1,500. I told Mr. Holt, one of the Commissioners—and as a matter of fact, that is the little influence that I had in the Board—the Board was practically dominated by Mr. Record and Mr. Fisk as to the discussions. I got in whatever suggestions I could—I was not a Commissioner. I was amazed and thought that the Erie Railroad Company would think that I was trying to head them off. I was amazed when the grant was made for $1,500, and Mr. Holt and I laughed over it.

Q. You told Von Moschzisker that the grant would cost forty or fifty thousand dollars? A. I told him that I thought it ought to.

Q. You told him that you thought it ought to? A. Yes, sir.

Q. Did you know that it ought to be? A. I think I did.

Q. Do you now think it ought to? A. I do.

Q. Who made the grant? A. The Riparian Commission.

Q. Who composed the Board at that time? A. I am sorry, Mr. Record—I don't mean to be offensive—look at the grant, and see. I don't recollect.

Q. I asked you who composed the Board? A. I am sorry I don't recollect. I can read you from the files. I have to use the word "files" because it confuses my answer with your name. My recollection is that the Governor, the Attorney-General, Willard Fisk, William Cloke, John I. Holt, and John J. Farrell were the members.

Q. It is not a fact that when the grant was made the Honorable Franklin Murphy appeared in person? A. It certainly is.

Q. He was a member of the Board that fixed that $1,500? A. Yes.

Q. Did I dominate the Honorable Franklin Murphy? A. I certainly don't think you did.

Q. I certainly did not make him agree to $1,500? A. I don't think you did. I am pretty well satisfied that you did not.

Q. These gentlemen granted for $1,500 what you thought was worth forty or fifty thousand dollars, and you don't pretend that I had anything— A. (Interrupting) You did not make the price.

Q. They granted what you thought was worth forty thousand dollars for fifteen hundred dollars, and the blame for that is not chargeable to me. A. It is not in the least.

Q. Did you tell Governor Murphy that you thought that that property was worth forty or fifty thousand dollars? A. I was rather a timid man and it was not my business and I did not tell the

Governor because I stood in a little awe of the Governor, but I did tell some of the Commission.

Q. Whom? A. Mr. Holt.

Q. Who else? A. Since then I told Mr. McLaughlin.

Q. Before it was consummated? A. I cannot remember.

Q. What did you say to Mr. Holt as the ground for your opinion? A. I did not say anything as a ground for my opinion. I am not an expert, although I had my idea.

Q. Why were your ideas that high? A. Because I thought it was a pretty valuable thing, and that was a kind of a rough estimate at the value, and I thought it was a pretty valuable grant.

Q. How did you arrive at $40,000 instead of $100,000? A. Because $40,000 is $60,000 less than $100,000 and I thought $40,000 was enough.

Q. Was it based on acreage or frontage? A. It was not based upon any facts except the general statement that it was very large. It was a general statement.

Q. Two years later after this had been forfeited, it was again granted for nothing, was it not? A. It was. The extension of the $1,500 was made for nothing.

Q. In the presence of whom? A. Well, now, I think it was the new Commission.

Q. Was it not a fact that the first time it was extended for nothing, Governor Murphy, Robert H. McCarter, Swayze and Mr. Dalrymple were all present according to the minutes? A. If that is the statement in my minutes, it is so. I would like to say further than that I still think it was worth forty or fifty thousand dollars, and I told Mr. McLaughlin.

Q. At that time? A. At that time. I said to him before that meeting "You have now a chance to get out of that grant what I think you ought to get for the State."

Q. You told that to Governor Murphy? A. I have said to you that I did not think it was proper for me to advise the Governor on subjects of prices, nor is it a fact that the Governor was supposed to know the details of the Riparian Commission.

Q. He was present? A. If the minutes say so.

BY MR. CROWTHER.

Q. Do I understand you to say that the grant was subsequently forfeited? A. The $1500 was a grant on condition that if the railroad was not constructed within two years, the grant would be void. At the end of the two years, it was not constructed. It was therefore the same as if nothing had been done. Then the minutes show that Governor Murphy, and Mr. Dalrymple, his private secre-

tary, and Robert McCarter and P. Sanford Ross, and others appeared before the Board and this was taken up and granted for nothing. I mean two years more were given without additional payment.

THE ATTORNEY-GENERAL.—The minutes show that I was present, but it is a mistake. I never attended a meeting of the Commission except on two occasions—and as a matter of fact, I was not present then.

MR. RECORD.—Then the record is incorrect.

THE ATTORNEY-GENERAL.—Apparently it is. Probably Mr. Duffield was there.

Q. Did you say anything to anybody else besides Mr. McLaughlin that now was the time to get what it was worth? A. I think I said something about it to Commissioner Reynolds. I did not charge myself with it. It was a general matter. I cannot say whom I spoke to. I know particularly that I spoke to Mr. McLaughlin, and I won't say but what I spoke to Mr. Cloke, also. Our relations were pleasant and I spoke generally about it, and I would not like to say to whom I did speak about it.

Q. Your opinion, then, is that a grant was made there twice—once for $1,500 and once an extension for nothing—for what was worth $40,000? A. I am willing to assume that my opinion was wrong but I had an—

Q. (Interrupting) That was your opinion? A. Yes.

Q. And still is? A. Yes, it is still, as far as the Railroad company is concerned.

Q. Let us go back. Why was the change of the application from the Railroad Company to this other company kept from the Board? Was it kept from the Board? A. I don't remember; I don't remember that it impressed me.

Q. Did you tell the Board that it had originally been started in the name of the Erie, and that it was then changed for the purpose of keeping the true applicant in the back-ground? A. I did not. I do not think I did. I did not charge myself with that as a detail. I know Mr. Cloke, as my testimony shows, asked me whether it was not necessary to notify the shore owners. I think it was discussed generally—all those matters. I want to say to the Committee that Mr. Cloke has a habit of coming in before the meetings and I go over the cases with him and give him all the information so that he can address himself at the meeting. Mr. Cloke said when I was talking about this—"Well, have the shore owners been notified in this case? Isn't that necessary?" I asked Mr. Record and as my recollection is, you said, "No"—that the 36th section was man-

datory on the Board to make the grant. That came up in the discussion with Mr. Cloke. There was nothing hidden as far as I am concerned.

Q. What do you mean by saying that I dominated the Commission? A. I mean this—this will take us back some years—the Riparian Commission, in my judgment, and as I observe it—and I think Commissioner Fisk will bear me out when he comes on the stand, was a corner in Bacot and Record's office, or a kind of a family relation. Mr. Bacot, Sr., was the engineer, and then I came in and did the work, and then we moved, and Mr. Record came in and they carried on the business, and all the time the Riparian Commission was a corner in the office of Bacot and Record. I was doing the work and carrying on that work. Mr. Bacot was my superior, but whenever I wanted anything done, I went to Mr. Bacot. I want to say, to save Mr. Record a great deal of questioning, that my opinion is that up to the time that the new Board came in, the Riparian Commission was simply a side show and a mere corner in Bacot and Record's office, and as a fact, the Riparian Commission never had any identity ; it had not any clerk or office of its own. I feel now that the riparian office belongs to the Riparian Commission. I was simply the engineer. It would seem that I had a lot of influence, but I didn't have any influence. I tell you personally, and say to you now that the riparian interests of the state were a family affair, if not a personally conducted affair, in all those years, and I believe that the riparian interests of the state have been shamefully abused in all of those years.

BY SENATOR MINTURN.

Q. What do you mean by the new Commission? A. I mean when Mr. Fisk and Mr. Cloke and Mr. Holt and Mr. Farrell went out. The new Commission that came in was Commissioner Cloke, Commissioner McLaughlin, Commissioner Reynolds, and Senator Williams, and it was not until that new Commission came in that I felt that the Board was relieved of the influences and the traditions of the past fifteen or twenty years, and when that new Commission did come in, Mr. Record was not the counsel of the Board, and the only thing that attached to the office was the fact that we were occupying a corner of Mr. Record's office and the new Commission—three of them at least—demanded of me, with more or less force, that I should secure offices, and Mr. Record's long statement, held together by slender threads of truth, contained certain untruthful statements regarding that matter. When this new Commission came in, I felt that all the traditions of the past were gone, and I immediately sat down and wrote a brief on the subject of riparian matters

and sent a copy of it to each Commissioner and to the Governor.
BY THE ATTORNEY-GENERAL.

Q. Is that the brief? (Handing witness paper entitled "A Plea for the School Fund" appearing at the end of this day's testimony.) A. That is the brief; and in response to that brief, this new Commission took up the matter and directed me to secure actual information as to the value of the shore front lands on the Hudson river. It was then making a start and I got the information, and this new Commission, where grants were made before as Mr. Fisk will testify, at $40.00 a foot, the new Commission made prices from $70.00 up to $200. One grant was made at $70.00 and one at $85.00, and these prices have been followed up since that time, and my brief will show, as I say, that the riparian matters have been shamefully abused, and that the state has been wronged by such grants as the Goetschius grant. When that new Commission came in that was the first time I had an opportunity to do anything. You can see my position with this old Commission, you can see my connection with it. I am happy to say that this brief is the record of what I did as soon as I was relieved of the influences of the past.

Q. Just as soon as I disappeared? A. You did not disappear.

Q. From the official connection with the Board—the Board commenced to realize, in your judgment, proper prices for these lands? A. No, sir. When you disappeared from the official connection with the Board, it was the same Board and Mr. Fisk was still the president of the Board, and I would no more think of saying to Mr. Fisk—he was a military man and I feared him—I would no more dare say to Mr. Fisk to his face, "You are inducing the Board to make grants of the rights of the state for an inadequate price" than I would have attempted to say to you that your legal services were not worth $1,500 a year.

Q. You charged that by reason to my influence that the Board made grants on improper consideration? A. If you want to place that charge on yourself, do so. I do not do it.

Q. Do you charge it? A. I do not.

Q. Do you charge in any way that I influenced any member of that Board in fixing the price other than by filing a written opinion —I mean to say improperly influenced the Board in any way? A. Well, in answer to that, I would say that I used to talk to Mr. Holt —he was a member of the commission—I used to say to Mr. Holt "there is something wrong." I said "There is something wrong in these matters." Perhaps it would interest the Commission to recall how prices were fixed. This was the procedure. An applicant

would come before the Board, having previously ascertained from me what the last grant was made for—we will say it was made for $5.00 a foot—he came before the Board and Mr. Fisk was helpful to the Board in that he was—we will say very loquacious—and the applicant would stand and wait and when the applicant had a chance he would present his application, and after a discussion with Mr. Record—Mr. Fisk did all the talking—somebody would say, "Well, what do you think it is worth?" Now, Mr. Holt used to rebel at this and said "The State has got this to sell; why should we ask the applicant what it is worth? We ought to say, 'We will sell this at so much.'" Well, the man, having previously ascertained what the prevailing price was, he would say "I think it is worth $1.00 a foot." Mr. Holt would then exclaim rather angrily, "Don't you know that the last grant was made $5.00 a foot," and that would start the discussion, and it was Mr. Record's habit to say, "The business way is so-and-so; the business thing is so-and-so," and the price would be fixed, Mr. Holt dissenting, not very vigorously—and wanting it made higher, but finally agreeing with Mr. Fisk and Mr. Cloke. Mr. Farrell invariably kicked. He kicked at it. He always insisted that the price should be made from two to five times as high as the Board fixed, and he never voted for it, although the record shows, unless a Commissioner was excused from voting, that the vote was unanimous, and Mr. Farrell always voted in opposition to the making of the grant at the price fixed. I don't know how far your influence went. Mr. Fisk and Mr. Record belong to the same social set in Bergen society. They were socially connected. Mr. Cloke and Mr. Record are both literary men. Those three gentlemen had their influence. Mr. Holt was a business man and so was far apart from them. Mr. Farrell was a newspaper man and was still farther apart. That was the situation in the Board.

Q. Didn't Brother Farrell have any literary distinction? A. Mr. Farrell was the brightest man as far as memory goes, and the strongest man as to price.

BY SENATOR MINTURN.

Q. Is the present Board making any grants? A. Yes; it is making grants every day.

Q. Receiving applications and making grants? A. Yes.

Q. Don't you think, in view of what you say, that the Board ought to cease making grants until the report of this Commission is in? A. I had that in my mind. I didn't like to suggest it, but I thought that the Board ought to stop making grants until your honorable committee had made its report to the Legislature. The only thing in my mind was, perhaps, that you had no authority in the matter.

Q. Will you express to the Committee whether or not I did this when Governor Griggs was a member of the Commission? Did I dominate the Governor? A. No, sir, nor did Commissioner Fisk dominate the Governor. To illustrate, I want to relate an occurrence with Governor Griggs. Commissioner Fisk had a habit, when a question was asked, of taking the matter out of a man's mouth and saying: "This is what you mean to say?" and then saying so-and-so, and then going on to tell what the man meant. On this occasion, Governor Grigss asked a question—I was describing the location of an application and the Governor said, "Is that on the right bank of the river, Mr. Payne?" Before I could tell him Commissioner Fisk said, "Do you mean the right bank going up or the right bank going down?" Governor Griggs, in his usual quiet way, said, "Captain" or "Colonel"—I forget which he was then—"If you were ordered to deploy your troops on the right bank of the river, and you asked such a question, you would be court-martialed for incompetency," and then, when he said that, turned to me for the answer. You and Commissioner Fisk never dominated Governor Griggs.

Q. Did I dominate Governor Voorhees? A. Governor Voorhees, as everybody knows, is such an amiable man that when Commissioner Fisk or you did the discussing, he would lie back on the sofa, light a cigarette, and calmly wait for you to get through. Is not that true?

Q. When I got through, was he dominated? A. Well, Governor Voorhees was a pretty amiable man.

Q. Was he dominated? That isn't what I want to know. A. Well, I can not tell to what extent your eloquence and Commissioner Fisk's eloquence concluded him. It was a pretty amiable outfit at that time.

Q. Well, Commissioner Cloke—what was he? A. Well, Commissioner Cloke is so—

Q. (Interrupting) Did I dominate him? A. Well, I would not like to tell. I would not like to tell except—perhaps I will, in answer to your question. I will in answer to your question give a little instance that will perhaps be interesting to the Committee. At one time Mr. Cloke—who is a newspaper man—was writing saucy things about Colonel Dickinson in the New York Herald, and he came to you and said, "Who controls the old man?"

Q. Who did? A. Colonel Dickinson, and said to you, "Who controls the old man?"

Q. Where? A. In the Commissioner's room.

Q. Was your ear at the key-hole then? A. Don't get saucy; I was right there.

Q. You overheard it? A. I was there.

Q. It was not said to you? A. Not so long ago we were very friendly. I always enjoyed your literary works, and when I had books, I brought them to you, and it was a very amiable and amicable relation.

Q. What was said? A. It was right in the office. He said "Who owns the old man?" and you said "I do." He said "Why don't you make him stop writing these things?" and you said "Well, we will take him over to the Lawyers' Club and give him a dinner, and it will be alright." You did that.

Q. How do you know? A. Because you told me—I will take that back—I don't know whether you did or not. You were so nice—your plan was always to take people over to the Lawyers' Club. Then after that Colonel Dickinson came in again and he said "I thought you owned the old man?" and you said "I do." Then he said "Why don't you buy him a warm pair of shoes?" That was the relation that existed between you and Mr. Cloke. I know that Mr. Cloke admires Mr. Record very much, and we all admire Mr. Cloke in turn.

Q. You have no desire or intention to suggest that this alleged domination by me was in any sense a corrupt one? A. No, sir. I do not know anything about how far your domination went or what kind of domination it was. I only know the friendly relation existing. I don't use the word "domination" in any offensive sense. I perhaps should have said "influence."

Q. Did I dominate Governor Werts? A. Governor Werts was a unique figure in the Board. Governor Werts would sit very patiently while you and Mr. Fisk did the talking. Attorney General Gray was at the Board one day and you and Mr. Fisk were talking as usual in your eloquent way. Attorney-General Gray walked around the room with great impatience and finally came around to me and said "Does it usually take half an hour to make a point before this Board?" That was the view of Attorney-General Gray. As to Governor Werts—Governor Werts would sit there. He is a very bright man; he would sit there and listen to your talking, and it was always amusing and instructive to me to hear Governor Werts, after you and Commissioner Fisk got through and in ten words would say what you two gentlemen had taken half an hour to say. You didn't dominate him either. But governors don't know anything about the routine of commissions—what they charge, and how they make up their price.

Q. They do if they sit there? A. They don't sit there very much and don't know.

Q. Didn't Foster Voorhees come to practically every meeting? A. Yes, he did.

Q. Didn't Governor Griggs? A. I don't think Governor Griggs attended so many meetings.

Q. Didn't he attend pretty regularly? A. Yes, he did.

Q. Didn't Governor Murphy attend pretty regurlarly? A. He did not. He attended just about one meeting.

Q. When the Edgewater matter came up, was he not there? A. That is what you have brought out in your examination.

Q. Didn't he attend any other meetings than that? A. My recollection is that he did not.

Q. That was not my idea? I thought that Governor Murphy was pretty regular in attending meetings. A. I may be mistaken.

Q. I should think it would be well for you if you would tabulate the meetings that the Governor attended. A. Perfectly easy.

Q. When Governor Murphy was there, did I dominate him? A. You did not. I could safely say you did not dominate Governor Murphy.

Q. Did I dominate you? A. You did not. You did not, sir. I want to recall one instance or two instances in which I dispose of the question of your domination of me. Our relations were most pleasant. When I became Secretary of the Board, I found you was in control as far as the officers were concerned. The first meeting I attended I made a change in the system and prepared a list of things I wanted to bring before the Board, and they were brought before the Board; in explaining a matter I hesitated and you interrupted and said, "What Mr. Payne means is so-and-so", which is your habit. I waited and I did not say anything. I went on and later something else occurred, and you said "What Charlie means is so-and-so." This was the familiar name you had for me. I waited, and when the meeting was over I went to you and I said to you, "I understand my business, and if I don't understand it, I don't want you to tell me how I should do it in the presence of the Board." You said, "I meant no harm" and I said, "I understand that perfectly. If I had not done so, I should have taken more vigorous means of checking you." I said "I have been in this business a great many years, and I understand perfectly what I want and don't you ever do it again," and you said, "I won't." Once again you did that and then I took the same matter up again and after that Mr. Record never interfered with my work in any way.

BY SENATOR MINTURN.

Q. What do you understand by the word "dominate" in that connection? A. I do not use "dominate" in its full sense. I mean "influence."

Q. Control? A. Yes, but perhaps to a greater extent than "influence." I mean that the relations between certain members of the Board were such that they worked together. In any other case, when the Senate asked for some information, and in the getting up of that information for the Senate, the fact became apparent that there was a divided influence, or divided interests, in the Board, and it was very pronounced and Mr. Fisk and Mr. Record fought so strenuously for their contention and Mr. Farrell and Mr. Holt fought for their contention, that, as a matter of fact, Mr. Holt, who was not a strong man physically, was almost thrown into collapse, and Mr. Farrell was driven to the point almost of striking both of those gentlemen, and afterwards I went to Mr. Record and I said to him "You ought to be ashamed of youself to treat those two gentlemen that way," and Mr. Record very manfully apologized to Mr. Holt and told him that he didn't intend to do so. That is the kind of influence and interests there were. Perhaps it will be interesting when you come to consider that matter, to find what the interests involved were.

MR. RECORD.—I would like the Commission to ask Mr. Payne to form a tabulated statement out of the letter book showing those people to whom he sent letters enclosing my bill, I mean. I don't want the letters, but I do want a statement here showing the name of the person to whom the letter was sent, in which was the statement to send a check, to the order of "George L. Record, Counsel." I would like the Committee to have that list sometime. I don't ask for it now.

THE WITNESS.—I have such a list now.

Q. Does it give the name of the lawyer to whom the letter was sent? A. No, it does not.

Q. What I would like to have is the name at the head of the letter to whom was sent this request for money? A. I will have it made out.

Q. Who examines the titles for the grants that are now made? A. I do.

Q. Anybody else? A. Yes, the Attorney-General, if I meet with any difficulty. I don't always—

MR. RECORD.—Do you examine the titles, Mr. Attorney-General?

THE ATTORNEY-GENERAL.—No.

A. (Continuing) When I strike anything unusual I refer it to the Attorney-General for his advice. I had a talk with the Attorney-General when he came in, and I told the Attorney-General what the practice had been—that it was a dead letter, and that no examination of abstracts had been made, and that this charge had been made without any services performed, but that the clause in the grant, I considered, covered the grant ; and he told me whenever I thought I needed advice on any matter " Bring it to me" and I have done that. Whenever I have had any questions I have gone to the Attorney-General. I not only write him, but sometimes I call on him and interview him, so as to save him as much trouble as possible, and I have relied implicitly upon him.

Q. Does the Attorney-General render opinions in these cases? A. No, sir ; excepting in such matters as big matters, in which he files an opinion.

BY THE ATTORNEY-GENERAL.

Q. And no twenty-five or fifty dollar fees? A. No, sir.

BY MR. RECORD.

Q. What is the status of the Edgewater and Fort Lee Railroad where you charge the grant was made for a price far below its value? A. The status of that is this : A short time before, or after, perhaps, the time had expired—the first extension had expired—Mr. Fisk appeared as Attorney for the Edgewater and Fort Lee Railroad and asked to have the license renewed, and stated that some work had been done, and asked to have the license renewed. The Commission directed that I should go on the ground and make an examination, and I did. I went on the ground and examined and reported to the Board the status of the work, which was then referred to Attorney-General McCarter for his advice to the Board.

Q. You make a report to the Board? A. I made a report to the Board that certain work had been done, and on that report Commissioner Williams moved that it be referred to the Attorney-General for his opinion ; and it is in the Attorney-General's hands now.

Q. When was it referred to the Attorney-General? A. I shall have to refer to the letter book ; I cannot remember.

Q. Is there any way of telling? A. Yes ; by the records of the office.

Q. Has any opinion been filed yet? A. No, sir.

Q. Is it not a fact that after Governor Werts left the Commission he appeared before the Commission as counsel for applicants or an applicant? A. I remember two cases where he appeared as counsel for the applicant.

Q. Is it not a fact that a bill was sent to him? A. I think it quite likely.

Q. Is it not a fact? A. Well, I don't remember that particular case, but I should say it was the case.

Q. And he paid it? A. Well, yes. I shall have to see my record to see whether a bill was sent to Governor Werts, but I will look it up and see.

Q. You will ascertain that fact? A. I will, with pleasure.

Q. Was it not the custom, before the general counsel was established, for men who were local counsel to present applications before the Commission and come before the Commission in matters in which their own county was not affected? A. I cannot say because that is a long time ago. Mr. Bacot kept the minutes then and I could not tell that. I could not tell that. I could not tell what business the counsel in the different counties had.

Q. You had not any difficulty in telling the Attorney-General that I did. A. Because that is where I became acquainted with it.

Q. How did you happen to pick out the fact that I did that? A. Did what?

Q. That I appeared, when I was local counsel, as counsel for an applicant? How did you happen to pick out the fact that when I was local counsel in Bergen and Hudson counties, I appeared for the railroad company, and not pick out similar facts with reference to other local counsel? A. The Navesink Railroad license has been used as a precedent for getting the Edgewater license, and the Attorney-General directed me to look up the record in the Navesink Railroad case, and I did so, and the Attorney-General said: "Was Mr. Record counsel for the Board at that time?" I said: "I don't know," and I looked in the minute book and found you were.

Q. You and the Attorney-General studied it up, but you didn't look to see if other lawyers who were local counsel for the Commission ever appeared before the Commission for applicants? A. Yes, we did; we looked up that case; we looked up and found that Applegate and Hope were counsel in Monmouth County, but the case was not referred to them.

Q. I am asking you whether you didn't look up to see whether Mr. Vredenburgh, when he was local counsel, ever appeared before the Commission for the Pennsylvania for which he was counsel in Monmouth County. A. That was not touched upon.

Q. By you or the Attorney-General? A. It was not of interest to look up the recording of all the records of the Board; it was not germane to the case.

Q. Who were the local counsel; do you remember? A. Well,

now, I cannot recollect. There is a list I think in one of the books—Monmouth county?

Q. Yes. A. I recall Applegate and Hope because they brought the greatest number of cases in 1874. In 1874 I made a survey for the Riparian Commission of the Shrewsbury River, and there was an avalanche of applications came from Applegate and Hope, I remember a most—

Q. (Interrupting) How do you know that the applications came in from Applegate and Hope? A. The applications were referred to Applegate and Hope—an avalanche of them.

Q. What did you mean by saying that they brought in the greatest number of cases? A. I didn't mean that they brought them in, but the greatest number of cases were referred to them.

Q. That is what you did mean—that Applegate and Hope brought in the greatest number of case; that is what you said, and that is what you mean. A. I didn't mean that. As I have testified—

Q. Was not that the custom—for Applegate and Hope and other lawyers to actually bring in the cases, and to appear with the applicant or without him and have him file his application? A. I don't know that.

Q. (Interrupting) Will you deny that? A. I won't deny something that I don't know anything about.

Q. Will you deny that there are on file applications in the office, in the hand-writing of and filed by local attorneys of the Board for the applicants? A. I will not deny that.

BY THE ATTORNEY-GENERAL.

Q. Will you say that there are some filed in the name of Leon Abbett, Jr.? A. I cannot safely deny that.

BY MR. RECORD.

Q. You don't deny that fact? A. Your statement is rather mixed in my mind. What are you referring to as a fact?

Q. What I am referring to is my recollection of the time and trying to get you to confirm it. Was it not the practice that the local riparian counsel oftentimes appeared before the Commission on behalf of an applicant, certified to the title for the Commission, the Commission having confidence in their probity to that extent, although in all other respects they appeared for the applicants and charged them what they chose? A. I have no knowledge or impression for or against that proposition.

Q. That is my impression of what went on? A. You could ascertain that by a search of the applications in the office.

Q. Will you do that? A. I won't unless I am ordered.

MR. RECORD—I ask that that be done. I say that it was the

custom for Messrs. Hope and Applegate to come up and make applications. I want to get at the facts.

SENATOR MINTURN—We all went to get the facts. What we want to get at is the system under which this business has been done since its inception.

THE CHAIRMAN.—Is it much work ?

THE WITNESS.—Yes ; I will have to find out who the attorney was in any county and then find out what applications were presented during the incumbency of that officer, and these records are filed in the Secretary of State's office. There is another reason, and that is, it will delay other work in the Riparian Commission for which I have no other provision.

Q. Did you ever do anything to conceal from the Commission the fact of the taking of these fees ? A. To conceal from the Commission ?

Q. Yes. A. No, sir.

Q. Did you ever keep any books out of their way ? A. Never.

Q. If anyone began to talk on anything that would lead up to that subject, did you head them off in any way ? A. Never.

Q. You never attempted to conceal it ? A. Never.

Q. You had no reason to conceal it ? A. I had no reason to conceal it. It was your business and not mine.

Q. There was no reason to conceal it ? A. I remember very often, when I would ask you : " How much do you want to charge in this bill ? "

Q. That went in the letters ? A. I would say that I thought perhaps you better not send that bill to that man.

Q. Why ? A. Well, because I really felt—I really felt that as far as you were concerned, that perhaps there was some question whether your salary as counsel of the Board did not cover that, too.

Q. You had no compunction about taking half ? A. Oh, no, because I was doing the work, and it didn't make any difference to me.

Q. Doing what work ? A. Drawing the grants.

Q. Were you not paid for that ? A. Out of the fees.

Q. Were you not paid for that by the Commission ? A. Not a bit.

Q. You were paid for drawing the grants out of the fees ? A. Certainly. That was the work you should have done.

Q. I ought to have done it ? A. Certainly. The practice before Mr. Record was appointed counsel was this : I drew the map and description, which was an engineer's work. Then I sent that map and description with the abstract to the attorney, and he drew the

grant, examined the abstract, and returned it with a certificate of title and his bill, and then that bill was sent with the notice that the grant was ready, when it was ready, and we got the money and paid it. When Mr. Record came in, that was his work to do—not mine; and as I have said, it was a difficult thing to get him to do anything. He was not much of a detail man; he was a good, broad man; it was a difficult thing to get him to attend to it. I did it. Then I said to Mr. Bacot: "This is not a fair deal." He said: "I will see Mr. Record." He saw Mr. Record, and Mr. Record said: "I will divide these fees." That is the way I got paid for the work.

BY THE CHAIRMAN.

Q. For the work that you did? A. Certainly. It was a proper fee for the work I performed.

BY MR. RECORD.

Q. You got a salary from the Commission? A. Yes.

Q. Then you did some work that I ought to have done? A. Exactly.

Q. Then, what was the justification for charging fees at all? A. I don't think there was any.

Q. Why did you take half? A. Because did the work that you should have done.

Q. I was not justified, according to your notion, in— A. (Interrupting) I did not pass on the morals of your position. I passed on the practical aspect of it. I was doing the work, whether you paid me out of the fees or paid me in any other way. As I said, it was a pretty loose arrangement.

Q. It was a pretty loose arrangement? A. It was. It was a pretty, easy, loose arrangement.

Q. You did all of the handling of it? A. I handled the engineering; you did the—

Q. (Interrupting) As far as sending out the bills? A. That is what I did. That was my part.

Q. You started to say that I wanted to charge a bill for fifty dollars, and then you went on to say that you remonstrated with me, and that you thought it ought to be less. A. I didn't say that. I never said that you ought to charge less.

Q. I understood you to say that? A. I didn't say that.

Q. When I was appointed counsel to the Commission, there was no salary fixed for me, was there?

SENATOR MINTURN.—The minute book shows that you were appointed, your salary to be fixed afterwards.

Q. And it was much thereafter before it was fixed? A. I don't know what you mean by "much". I should not think it was.

Q. It was nine months, I think. A. I should not think that was "much."

Q. In the meantime where did the fees go to that came in during those months, whatever they were? A. What was the date?

Q. Between the spring and fall of 1893; where did the fees go during that period? A. The first fee that I have any record of is April 2—

Q. (Interrupting) I don't mean as to you. I mean to say during that time before my salary commenced to be paid, did the applicants continue to pay fees during that transition period? A. I don't remember.

Q. You don't deny that they did? A. I don't deny, because I don't remember. Therefore, I cannot deny.

THE CHAIRMAN.—Is there any question or dispute but that the local counsel were all discharged when Mr. Record was appointed general counsel?

MR. RECORD.—That was the effect of it. I don't know whether they were dismissed. They simply got whatever business they brought in or sent in; but it is a fact that after I became general counsel I took charge of all.

THE ATTORNEY-GENERAL.—The Committee will also recall that, by the resolution of October 22, 1893, Mr. Record's salary was fixed at $1,500 a year, to run back to March 16, 1893, when he was appointed general counsel. It was to run back over that period.

Q. When I was appointed, and before the salary was fixed, do you have any recollection of the Commission saying anything at the time in reference to fees, one way or another? A. Then I did not come in contact with you and the Commission.

Q. That was in Mr. Bacot's time? A. That was in Mr. Bacot's time; yes.

Q. Did you ever know me, at any time while I was in that office, to draw a deed? A. A grant.

Q. A deed or a grant—I mean other than those special things like a license? A. No; I never did.

Q. Before I came in as counsel, who drew the deeds? A. The attorneys. They were sent to them, and they drew the deeds.

Q. They drew the deeds? A. Yes, sir; and sent them back with a certificate of title.

Q. Can you prove that from the records? A. Yes; I can prove it from the records, and from the papers that have been returned.

Q. I wish you would submit formal proof of that. A. Yes, sir.

Q. You will? A. With pleasure.

Q. Showing that these local counsel drew the deeds? A. Yes, sir. That, in my opinion, gentlemen, is the reason why a general counsel was appointed. The local counsel would hold on to these maps and descriptions and papers that I sent them, and sometimes it was a long time before the Commission got them back again—

Q. (Interrupting) Didn't Mr. Bacot draw the deeds? A. No. They would keep these papers, and Mr. Bacot, who was a little bit nervous, would get more irascible and find a great deal of fault because these attorneys held on to these papers, and that was really the reason for having a counsel appointed, who could draw the papers in the office, and the papers were not sent out.

Q. Didn't R. C. Bacot draw the deeds? A. I don't remember. That is a long time. I don't think he did.

Q. My recollection is that all deeds were drawn by Mr. R. C. Bacot, and I would like to have that fact looked up. A. The old gentleman never sat down and drew deeds. They were sent to the attorneys. You will see them in the handwriting of the different attorneys—some of them pretty rotten deeds, too.

Q. You know of no deed that I ever drew? A. I am pretty certain that you never drew a deed.

Q. That is my opinion. A. Yes. I am pretty sure that you never drew a deed; you simply signed the deeds as acknowledging my signature.

Q. Your proposition that the drawing of these deeds was part of my duty, is new to me. A. Is it? What did you pay me the fees for?

Q. I paid you the fees because you chipped in to the contribution of the clerks, and because you did a lot of work for me in a general way back and forth, and was it a compensatory arrangement. A. (No answer.)

BY SENATOR MINTURN:

Q. Didn't the Board have access to the book? A. The Board only came once a month and they didn't know anything about the details of the work of the Commission at that time.

BY MR. RECORD.

Q. It is a fact that the cost of paying for this clerk hire was not paid by the State or by the Board, is it not? A. I paid mine.

Q. Didn't I pay some of it? A. I mean I paid my share of it.

Q. I mean the Board and the state didn't pay for those expenses. I mean by any regular appropriation? A. That is true. It was not until 1905. I paid the expenses of the office right up to 1905.

Q. Have you any personal emnity to me? A. Mr. Record, I would like to say that I have viewed your conduct with a great deal of concern and worry. I admired you; I enjoyed your society very much, and I was sorry to know by one of your own statements—well, a tramp on the street would not have done what you did. I admired you. I used to enjoy your company, as you know, bringing in my books, and discussing them. Someone has said "What is the reason of the feeling between you and Mr. Record ?" There is none ; only my position is this : when you took this line of activity against the Governor and against the officials of the Board—perfectly proper on your part, and commendable—perfectly proper and commendable —my position was that it interfered so thoroughly with my work as riparian engineer—and the Committee should know this—a gentleman came to discuss riparian matters at a meeting and simply stopped and could not go on with his presentations because of the noise you made. I thought it was a most outrageous thing and unmanly in you, your conduct when the time came when the Commission was to move. I said "Here is this man enjoying this personal arrangement for all of these years, and he still persists in holding the Commission to this arrangement" and I thought if you had been manly, when the Commission asked you to release them—

Q. (Interrupting) Where is the record that they asked me to release them ? A. There is the trouble. I have confined myself to the files of the office, and I do not want to go into a wrangle about the case about anything that I could not prove. When you made your statement in the newspapers—I am under oath, by direction of the Riparian Commission to give evidence as to what I know, and to testify according to the files of the office, and I will not make a statement that I cannot prove.

Q. Did I ever do you any personal wrong ? A. No, sir ; but you did wrong to my friends, and that is the reason of it.

Q. Who are your friends whom I have wronged? A. Well, I decline to answer that question ; but I am proud of everything that I have done for my friends. I want to say if I may—

BY THE CHAIRMAN.

Q. You may. A. I want to say to Mr. Record, and to this Committee, that while I have refrained from replying and making any statement in the papers, that at the proper time, when this orderly investigation is concluded, Mr. Record will have a chance of appearing, and I shall present these matters in a proper court for him to answer.

BY MR. RECORD.

Q. I would like to ask, if the Committee will allow, what was the wrong that I did your friend ? A. I decline to answer that.

BY THE ATTORNEY-GENERAL.

Q. Were any bills sent out by you for Mr. Record's charges of $25.00 or $10.00 or $15.00 or $50.00, before he divided with you? A. I cannot say as to that. I presume there were. I cannot say.

Q. You cannot say? A. I cannot say.

Q. You have told us that under the regime of the local attorneys, the deeds were drawn by them, and that frequently the papers were lost. A. Yes.

Q. Were those papers ever found? A. Some were, and some were not.

Q. What papers were they? A. They were the abstracts and the map and the descriptions that I sent them.

Q. Were any deeds lost? A. No, because when they went so far—the fact was that I think they didn't do the work, and then the papers were lost; but whenever they went as far as doing the work, then they sent the papers back.

At this point the following resolution was adopted:

It is regularly moved and seconded that this Committee respectfully request the Riparian Commission to make no other grants or leases until the termination of this investigation.

The stenographer was directed to see that a copy of the resolution is sent to the Riparian Commission.

After the adoption of the resolution, Mr. Payne explained to the Committee that there were several important grants pending, whereupon the Attorney-General said:

"I think that resolution a very proper one to adopt. It will serve to show the Commission what the sense of this Committee is on the subject, and then, if these applications which Mr. Payne says are important, and are pending, really require immediate attention, I think the Commission can be safely trusted to take proper action. Of course, the resolution is not binding on them, but its adoption will inform them of the conclusion reached by this Committee from the testimony taken."

The matter of adjournment being taken up, the following occurred:

MR. RECORD.—I wish to oppose any proposition to adjourn this Committee until the members of the Riparian Board, Governors Griggs, Werts, Voorhees and Murphy have been subpoenaed here.

THE CHAIRMAN.—On what ground?

MR. RECORD.—On the ground that you have permitted the insinuations to go against me, and that these have got to be cleared

up by other witnesses besides myself and Mr. Payne.

THE ATTORNEY-GENERAL.—What do you mean—that this Committee and counsel have—

MR. RECORD.—I mean that the work of the Committee has operated to that effect; I do not charge it intentionally at this point, but I say that is the effect of it. I suffer by that, and it severely affects me. I am in the middle of a political campaign. I think that having taken this up in the middle of August, when there was no necessity for it, you should finish it. There was absolutely no necessity of any meeting such as you held the other day. That could have gone off until September. Having held that meeting, how can you deny me the opportunity to clear myself?

THE ATTORNEY-GENERAL.—Mr. Record seems to think that this Committee is sitting for his special benefit. I will reiterate, and I propose to say it again—if I have any influence with the Committee—that I propose to start on my vacation tonight. We have given Mr. Record every chance to make his statement, which is the same as he gave to the newspapers before it was presented here today. That he may call witnesses at this or any other time, is not the purpose of this Committee. We have acceded to his requests, and that is something that has never been done by any other Committee, and I think the time has come when this Committee should resume the management of its affairs. For my part, I shall go on my vacation tonight.

SENATOR MINTURN.—I feel the same way as the Attorney-General. I feel that we should all have a vacation. I had already started on a vacation, but came back for this meeting. Personally, I feel that I need one, but I felt that I did not want to do anything that would be an injustice to anyone; but I feel that the time has come when I need a vacation.

MR. RECORD.—Before any adjournment is taken, I would like to inquire what is the status of an alleged resolution to have printed copies of the testimony that has been taken. I saw in the newspapers a statement that a large number of copies had been ordered printed.

THE CHAIRMAN.—You said that in your statement in the newspapers.

MR. RECORD.—I said, I saw it in the papers.

THE CHAIRMAN.—The question came up in regard to furnishing the members of this Committee with copies of the testimony taken, and then when we went to work we had the precedent in the other investigation to have them printed, and as they would have to be printed in any event,we instructed the stenographer to

send the typewritten sheets to the printer and have them printed. Whether that has been done or not, I don't know.

MR. RECORD.—I request the Committee, if they have taken any action in respect to the printing of the testimony taken at these hearings, that they will include in it the testimony taken here to-day.

THE CHAIRMAN.—That will be done. All the testimony before the Commission will be included in it. My own notion is that no printed testimony will be out for some time yet. I want to correct the charge that this Committee intends to circulate this testimony for the purpose of hurting anybody at the primaries. There was no idea of the kind on the part of any of the Committee.

MR. CROWTHER.—I think that statement is well made. Mr. Record supposes that this last meeting was held for the special purpose of hurting him in the eyes of his political followers. There was no such intention, and I do not think, personally, it can affect Mr. Record in the least. I don't think it will hurt his prospects in the least. That is the way I look at it. I know that the sixteen or eighteen of them in my county will not like him the less ; and those that don't like him, won't like him any better.

THE CHAIRMAN.—In passing upon the motion to adjourn, the Committee wants to stamp it as absolutely unfair if Mr. Record or anybody else gets up and says that we have not been fair to him. Personally, I would sit here a month, but I think the time has come to adjourn.

THE ATTORNEY-GENERAL.—I think it is eminently proper that this Committee should adjourn until September.

THE CHAIRMAN.—There is the possibility of a special session of the Legislature being called shortly to dispose of the Passaic river pollution matter, and we do not want to conflict with that.

THE ATTORNEY-GENERAL.—I suggest that the chairman confer with the Governor, and that after the chairman has ascertained the date of the special session of the Legislature that he reconvene the Committee at some date in September, not less than two weeks from today.

THE CHAIRMAN.—The understanding is that we adjourn until September, and will not reconvene for at least two weeks from today.

The Committee adjourned.

The following is the brief referred to by Mr. Payne in his testimony which was presented and ordered printed in the record :

A PLEA FOR THE SCHOOL FUND.

The question of what rates the Board shall charge for the lands of the State is a difficult one ; for while the State is the absolute owner of the lands under water and may sell to any one, whether the riparian owner or not, its lands are dependent upon the riparian owner for access from the land, and so the riparian owner holds, in a great measure, the key to the situation ; but the State holds the more important part—the connection between the upland and the navigable water—and in some cases, by reason of a railroad running through the State's lands, is in possession of a perfect property as fully as is the city of New York with the river on one side and the public streets on the other.

The situation is not true in many cases, so that, as a rule, the State is practically limited to one customer, and that the riparian owner.

One of the difficult questions is presented where the owner of a large tract of water front property in a locality in which little or no commercial development has commenced. In cases of this kind, the depth of water, the relation of the place to commercial centers and to the main tide-ways will indicate the possibilities, but the probabilities call for careful deliberation, but the lands once disposed of are forever out of the assets of the School fund, excepting as the investment of the proceeds of the present sale benefit it.

The question is a serious one ; it is argued in such cases that the Board is warranted in making sales of these large tracts of water front property at low rates, on the ground that their sale and development would more than compensate the state for the present concession and loss of revenue.

On the other hand, if the Board refuses to make grants where the property is of little present value, will the holders of the upland be discouraged and prevented from developing the property by reason of their not knowing what price the state will finally put upon its land ?

The upland owner, however, is in a different position from the state ; he adds to his holding the more valuable adjunct—the state's lands under water—and then proceeds to develop reaping the benefit of the successful development, while the state, having parted with its interest, so far as the school fund is concerned, reaps no further benefit.

While no advantageous development can be made in which the state at large does not share, should not the matter receive very careful consideration, on the one hand not to check development,

and on the other hand not to deprive the school fund of its profitable share of the investment?

The state's lands are irrevocably set apart for the support of the school fund. How far can the Commission go in giving concessions, the future benefit of which, let us admit, inure to the locality and the state at large, but none of which can go directly into the school fund?

May it not even be that the duty of the Riparian Commission is a selfish one; that the duty and interest of the Riparian Commission might seem to be opposed to the interest of the state at large, and that this division of interest is a necessary one under the act of 1894, which reads into life paragraph 6 of the seventh section of Article IV of the Constitution.

The Board has been making concessions on the ground that the industries favored would benefit the locality and state at large.

Take the case of the Glucose Company on the Hudson river: A rate of $60 per foot was fixed, with a rebate of $20 per foot upon the completion of certain work. Let us assume for argument that the rate of $60 per foot was a proper one. The state at large was given the sum of $20 (the difference between $60 and $40) in future benefits, but the school fund was depleted, or rather deprived, of that amount, and there is no way that suggests itself to me of recouping the school fund unless the school trustees should decide that the grant, under the circumstances, was without consideration, and void. It seems clear to me that the school fund suffered by that and all similar transactions.

An answer to this, may be the reason for the concession in some cases, is that it adds to the value of the remainder of the state's lands in that particular locality, and in that way benefits the school fund, so that now it comes to a matter of locality and judgment.

Is, for instance, the Hudson River such a locality as to need the encouragement of concession? Is it not practically in the same class of property as the water front of New York City?

Then, too, is not the water front holding of the State on the Jersey shore front of the Hudson River, so limited in extent and so well established in value as to make it unnecessary to offer any other attraction or inducement than the actual value of the land, and would it not be the better policy with such lands if the applicant does not intend to improve them at once, inasmuch as under the present plan the rights of the state cease at the time of making the grant, to as much as possible anticipate the reasonable advance of the next ten years?

Take the Atlantic City case: The act of 1901 (P. L. 1901, p. 374),

was declared void because of the very fact that it violated the provisions of the constitution in setting apart the lands of the state for the benefit of the school fund, on the ground that the lands of the state were irrevocably appropriated for the support of free schools, &c., by the supplement of 1894, (P. L. 1894, p. 123) which states:

"That all lands under water belonging to this state be and the same hereby are irrevocably appropriated for the support of free schools in this state, and that all moneys, &c." And the present Park Act has been thought to be open to the same objection, in that it restricts the sale of the state's land to one customer, and that the municipality, and so decreasing its value.

It does not apprehend any difficulty in the work of the Commission under this, perhaps, narrow construction of its duties and privileges. I think there might be danger in a too narrow construction of the principle; it might check or prevent the development of the state's water front, but my thought is that whatever concessions are made should be made with the end in view that the benefits should inure directly to the school fund, and, through that, to the state at large.

AS TO THE VALUE OF THE HUDSON RIVER FRONT.

In the condemnation proceedings by the Tunnell Company against the Delaware, Lackawanna & Western Railroad Company, Mr. Caldwell, the Vice President and Traffic Manager of the D., L. & W. R. R. Company, testified that the west shore of the Hudson River was most important and valuable in that the water front could be used in connection with railroad piers and ocean-going steamships; that the only reason, in his opinion that the ocean-going steamships had not tied up to the railroad piers was that the railroad companies had not made provision for this, and aided by a peculiar traditional prejudice. He stated that when this prejudice should be overcome, there was no reason why the New Jersey shore should not be as valuable or more valuable than the New York shore. He stated that the terminal facilities on the New Jersey shore were so limited that if the Delaware, Lackawanna & Western Railroad Company were deprived of theirs they did not know where to duplicate them, and that to duplicate them or supply them in any degree would be prohibitive in price.

He stated that the cheapest way to handle grain was from elevators on the railroad piers to the steamships and that the difference in favor of handling grain in this way over lightering it was fully forty per cent. in favor of the direct transfer to the steamship from the railroad pier.

The point of this is that the New Jersey shore between Fort Lee and Weehawken will in time be used for direct communication between railroad and steamship and be immensely valuable. The value now of water front property on the Hudson River from Castle Point down, is probably not less than $2,500.00 per foot.

In Baltimore all the vessels go to the railroad piers and the piers were built for this purpose.

Mr. A. P. Boller, an engineer testifying in this case, says that it is almost impossible to get water front on the Hudson River except at a prohibitive price.

Mr. Ingersoll, Chief Engineer of the New York, New Haven and Hartford Railroad Company, testified that the water front lands on the Hudson river were becoming so valuable that the classification yards and territory for all purposes, where it could be secured, was being done west of the Jersey City hills, because the water front lands were too valuable.

Mr. Truesdale, President of the Delaware, Lackawanna & Western Railroad Company, testified that the reason they were going out on the meadows with their classification yards was because lands on the tide water were so scarce and so valuable that it was not good business now to devote them to such a purpose.

Respectfully submitted,

JOHN C. PAYNE,

Sec'y & Eng'r.

SENATE CHAMBER, STATE HOUSE.

Trenton, N. J., September 14, 1906.

Meeting of Special Committee of the the New Jersey Legislature to investigate the granting of Riparian Lands by the State, &c.

PRESENT.

SENATORS WAKELEE (Chairman), MINTURN and AVIS, and ASSEMBLYMEN BARBER, HOLCOMBE, JONES, REED and CROWTHER.

ATTORNEY-GENERAL MCCARTER and ASSISTANT ATTORNEY-GENERAL DUFFIELD.

The Chairman, Senator Wakelee, announced that Mr. Scott Snyder has been appointed Clerk to the Committee.

ATTORNEY-GENERAL MCCARTER.—Former Commissioner Willard C. Fisk is here in response to a request from me, courteously coming of his own accord, and as he desires to leave as soon as he can. I suggest that we call him first.

WILLARD C. FISK sworn. Examined by the Attorney-General.

Q. You, as we all know, are a member of the bar; how long have you been admitted to the bar? A. I was admitted in 1878.

Q. When did your connection with the Riparian Commission first commence? A. I was appointed a member of the Commission to fill the unexpired term of the late Bennington F. Randolph, Judge Randolph, by Governor Abbett, I think during the first year of his second term; I can't recall the date.

Q. How long did you continue a member of the Board? A. Until the last year of Governor Murphy's term; about that time.

Q. So that you were in the Board how long generally? A. I should think 12 or 13 years.

Q. Did you ever hold any position in the Board? A. I was vice-chairman for a good portion of that time.

Q. The chairman being the then Governor ex-officio? A. Yes sir.

Q. In the absence of the Governor you were the presiding officer of the Board? A. Yes, sir.

Q. Who was the General Counsel of the Board while you were connected with it? A. At first, all legal questions were referred to the Attorney-General; some time after Mr. George L. Record was made counsel.

Q. In order to crystallize the matter, I will ask you to briefly summarize the history of the Riparian Commission from its original inception down to the present time, how it was constituted, and how long the term continued, etc. Of course, this is a matter of law and spread upon the statute books and perhaps not generally known, and this is the easiest way of bringing it before the Commission. A. In 1864, a Commission was appointed to ascertain the rights of the State in the waters of the Hudson River, New York Bay and the Kill von Kull. In 1869 the Riparian Commission was organized. It consisted of four members, and they were appointed for life.

Q. Do you remember who they were? A. I know that Judge Bannington F. Randolph, father-in-law to Governor Bedle, was a member from the beginning. I think Mr. Lathrop was a member.

Q. Francis C. Lathrop? A. Yes, sir.

Q. Amzi Dodd? A. He was a member; and I don't recall the fourth one. They were appointed for life. At that time it took the affirmative action of three of those gentlemen to make a grant or lease, and also the approval of the Governor and the Attorney-General. Subsequently, by legislation, the approval of the Attorney-General was dispensed with. In the early eighties, an act was passed limiting the term of the Riparian Commissioners to four years, and requiring the members then in office to cast lots to determine which should go out in one, two, three or four years, so that one Commissioner thereafter would leave the Board each year. It was while that was in operation that Judge Randolph died, and I was appointed to fill the unexpired term. Subsequently, the Commissioners were legislated out of office. That was early in the nineties, and a new Commission was appointed consisting of five members, of which the Governor should be one. Up to that time the Governor was not a member of the Board and had no vote. After that act was passed the Governor had a vote, and the affirmative vote of the Governor and any two members of the Commission would carry a grant or lease. I was re-appointed to this new Board. A few years later the Commission was again legislated out of office

and an act was passed, which is the present act, making the Board consist of five members, one of whom should be the Governor, and requiring of the others that no more than two should belong to the same political party. I was re-appointed to that Board.

Q. I have before me a copy of the Hoboken Observer, issued on the 13th of August last, which published what purports to be a statement or an interview with you concerning riparian matters. Unless you are familiar with that statement, will you look at it and tell us whether or not it correctly quotes your views as given at that time, concerning the matters which you discussed at that interview? A. I saw this newspaper the day it was published ; I have not seen it since. Of course, if you desire me to read it now, I will do so. My recollection is, that it does not correctly quote me in relation to these matters.

Q. Did you submit to an interview or give the Hoboken Observer an interview about that time ? A. I did, yes, sir ; and many of the things in here are correct, but it was very brief, and it was just as I was starting for a train for the seashore, and occupied, perhaps, five minutes. There are some inaccuracies there that are apparent on its face. The reporter saw me just as I was leaving for the train, for the seashore. I don't think I talked with him over five minutes.

ATTORNEY-GENERAL McCARTER.—I offer in evidence, for the sake of accuracy, and in order that the further questions may be intelligently considered, the Hoboken Observer of Tuesday, August 13, 1906, containing an article headed : "Willard C. Fisk Defends the Former Counsel of the State Riparian Board."

The article is as follows :

"Willard C. Fisk, the former Riparian Commissioner and vice-chairman of the Board during the most of years when George L. Record was counsel to the Board, and during all of that period covered by the testimony of John C. Payne, secretary and engineer of the Board, who sought in his testimony before the Legislative Investigating Committee to impute improper motives to many of the things which Mr. Record did as counsel, this morning came to the defence of Mr. Record in no uncertain terms. Mr. Fisk is a democrat and served in the Riparian Board from 1889 to the time Governor Stokes appointed the present Board. He said :

"'I cannot understand the testimony of Mr. Payne or his object in attacking Mr. Record as he has. His testimony does not jibe with the facts. I was a member of the Riparian Board before Mr. Record was its counsel, all the time he served in that capacity and after he ceased to be counsel.

"'As far as I know, while he was counsel to the Board he discharged his duties faithfully and well, to the entire satisfaction of the members of the Board. His duties were necessarily very largely discharged in conjunction with Mr. Payne, the secretary and engineer of the Board, and if, during that period, there was anything in Mr. Record's conduct as counsel of the Board that was improper, Mr. Payne, as secretary, neglected to bring it to the attention of the Board, or to me, as vice-chairman at the time. If there was anything wrong it was his duty to make it known when it occurred.'

"'What of the charge, or intimation of Mr. Payne's that Mr. Record took fees from applicants to which he was not entitled;' Mr. Fisk was asked.

COULD NOT BELIEVE IT.

"'There is nothing in that; in fact I cannot see that there is anything in any of the testimony that has been produced that is worthy of attention. I fail to see the drift or purport of it, and I could not believe it when I first read it in the newspapers.

"'In the past, before the Board of Riparian Commissioners had regular counsel, it had counsel in different parts of the State and one here. Whenever an appilcant came to the Board with his application for a riparian grant he was compelled to have the counsel, who was assigned to the county in which the land was, examine the titles to the property. The counsel were not paid by the State, but the applicant was compelled to pay him whatever fee he asked for his services in searching the title.

"'The Board had no knowledge of what fees were charged, nor did it have any say in the matter except to name the lawyers who were to make the searches. Mr. Record first had connection with the Board as the counsel assigned to Bergen and Hudson Counties to make searches of riparian land. Because there was no rule of the Board as to fees to be charged for searches in some parts of the State these charges became burdensome to the applicants.

ENTITLED TO FEES.

"'I have known local counsel to the Board under the old system to charge as high as $200 and $250 for a search. When Mr. Record was made regular counsel to the Board he did the work at uniform prices ranging from $15 to $35. He saved applicants considerable money and gave general satisfaction. He was fully entitled to the fees, as the work was entirely outside of the duties for which he was

employed as counsel to the Board and was done for individuals and not for the state'

"In reply to a question regarding the giving of a license to the Edgewater-Fort Lee Ferry Company to build a railroad over portions of a 1,000 foot stretch of riparian land, for which license the railroad paid $1,500, this being the incident in which Mr. Payne, in his testimony, and Attorney-General McCarter, on his cross-examination, made it appear that a grant had been made for this sum, while other smaller properties adjacent netted the state $34,000, Mr. Fisk said:

"'I do not remember that, in this case, the advice of Mr. Record was asked for (Mr. Payne testified that the license was given upon the advice of Mr. Record) for the reason that the Board acted upon the precedent established by the opinion of Attorney-General Stockton, who, in the case of the Central Railroad of New Jersey, when it was forced to move its tracks from Sandy Hook to the Atlantic Highlands, advised that a license could be granted by the Board under the thirty-sixth section of an act respecting railroad.

OTHER GRANTS MADE.

"'Since that opinion,and before the Edgewater and Fort Lee Railroad license was granted, several grants of licenses were made in accordance with the opinion of General Stockton, who declared that the licenses could be issued without respect to the wishes of the owners of adjacent ripa.

"'The license was to build a railroad over the lands of the State between high water and low water mark. I was doubtful at the time the opinion was rendered as to the right to grant the license as against the shore owner, and then I have not changed my opinion. Since then the courts have rendered decisions upholding my contention.

"'In the Edgewater and Fort Lee railroad case the rights of the property owners were not jeopardized, however, as there was a special provision in the license compelling the railroad company to get the absolute consent of property owners before doing anything. I fail to understand the line of questioning, and the inferences caused by the examination of Mr. Payne by Attorney-General McCarter, as before the original license was granted the Edgewater and Fort Lee Railroad Company Governor Murphy had it submitted to Attorney-General McCarter, who approved it as to form.

"'Again, the license has expired and a second license, or renewal of the first has expired, because of the failure of the railroad company to complete the building of the railroad, and but a few weeks

ago, I, as counsel to the railroad, made application for another renewal of the license. This third application has been submitted to Attorney-General McCarter by the Board of Riparian Commissioners. The original license gave absolutely no fee, title, lease or other right, and since it was granted the courts have sustained the view I always held, namely, that the license gave no rights as against the shore owner. All it did was to say to the railroad company, 'You may go to the shore owner and negotiate with him to build your road.'

"'I always considered that $1,500 was a big price to pay for such a piece of paper. I was in the Board when the first license was granted. The Edgewater and Fort Lee Railroad is a branch of the Erie Railroad constructed to run north from the Susquehanna Railroad terminal, tapping the land below the Palisades to which there was no communication by either land or water. In some places it runs entirely upon upland, in some places partly on upland and partly below high water mark, and in other places entirely below high water mark.

URGED BY UPLAND OWNERS.

"'The application was strongly urged by P. Sanford Ross and other owners of riparian land and upland along the route, their claim being that the building of the railroad would greatly enhance the value of their land, which they had bought from the State, as well as the State's land. The license was granted for $1,500, and in the license was inserted, at the request of the property owners, a clause making it void if the railroad was not completed within two years.

"'Before the two years were up I ceased to be a member of the Board of Riparian Commissioners. When the time did expire, and, owing to legal difficulties with property owners the road had not been completed, I was retained to make application before the Board for a renewal of the license on the ground that while the railroad company had constructed a considerable portion of the road it had been unable to make it continuous because it had to take condemnation proceedings, which were then pending. The extension was granted.

GOVERNOR APPROVED.

"'I fail to see what Mr. Record could have had to do with either application, as under the law, no affirmative action of the Board can become effective without the approval of the Governor, and the

Governor signed the license and had the seal of the State affixed to it.

"'Furthermore, Governor Murphy attended every hearing at which the application for the license was discussed and took a lively interest in the proceedings. He followed closely all the arguments and approved everything that was done. He also had Attorney-General McCarter draw up the form of license.'"

Q. In the course of that article, speaking of the Edgewater and Fort Lee railroad license that was issued, you referred to the case of the Central Railroad of New Jersey when it was forced to move its tracks from Sandy Hook to the Atlantic Highlands? A. Yes, sir.

Q. I presume you intended by that reference to refer to what we have known in this investigation as the Navesink railroad? A. Yes, sir; I believe that is the name.

Q. Is it controlled by the New Jersey Central? A. Yes, sir.

Q. At the time that the grant or license was made to the Navesink or Jersey Central Railroad Company, were you vice-chairman of the Board? A. I think not; I am not certain; but I think not. I might say, if you would permit me, Attorney-General, that the position of vice-chairman was formed after the law had been changed making the Governor a member of the Board. He was then made chairman and some member was named as vice-chairman. I was not the first vice-chairman under that arrangement; there were some others before me, I don't remember who.

Q. I find by reference to the minutes of a meeting dated September 18, 1890, the following entries: "The Board then proceeded to the election of a permanent Chairman. Commissioner Fisk was nominated and unanimously elected Chairman of the Board." A. I have no doubt that is correct.

Q. So at that time, on the 18th of September, 1890, you became the permanent Chairman of the Board? A. Yes, sir; I think that is when the Board was legislated out of office and a new Board appointed. I am not certain about that.

Q. I observe that a copy of the license from the State of New Jersey to the Navesink Railroad Company, which is handed to me by the Secretary, seems to be dated after the time of your appointment as Chairman? A. Yes, sir; my recollection is, that I didn't preside at that Board meeting, but I don't recall it.

Q. Do you know who were the local Attorneys of the Board in Monmouth county at the time of the giving of that license to the Navesink railroad? A. My impression is, Applegate and Hope, but that impression is strengthened by what I heard testified to at the last session of the Committee, at which I was present.

Q. Who was the attorney for the Navesink Railroad Company in its application for this license to the Board? A. I can only speak from what I learned at the last session of the Committee. Primarily, I always understood Mr. DeForrest represented then.

Q. Have you no recollection as to who appeared as attorney for the railroad upon the papers? A. Only as it was brought to my attention at the last session of the Committee. I haven't examined the papers or seen any of the records.

Q. The papers to which reference has already been made on more than one occasion— A. I heard it referred to there that Leon Abbett, Jr., was on the paper, but it was entirely new to me when I heard it. I don't think he appeard before the Board.

Q. Do you know now any reason why Mr. Leon Abbett, Jr., should have apparently been the attorney of record and yet not have appeared for the application? A. I know nothing about it, sir.

Q. Do you recall whether or not Mr. Bacot was present at the meeting? A. R. T. Bacot?

Q. The old gentleman, whether he was present when the grant was executed? A. It is impossible for me to recall that. He was secretary and engineer at that time, and my recollection is, that there was seldom, if ever, an occasion when Mr. Bacot was not present at the meeting, until the latter part of his life, when he retired from the active work of the Commission.

Q. By referring to the copy of the grant which I have already shown you, it seems that it bears date the 11th day of December, 1891; by also referring to the Minute Book No. 5, page 135, it appears that Mr. Bacot was present and signed the record. A. I can't dispute it, sir, I don't know.

Q. Exactly, I just want to preface that. Do you know any reason why Mr. R. C. Bacot, who seems to have witnessed all the grants preceding and succeeding this particular one, didn't witness that? A. I know nothing about it, sir.

Q. You do know, do you not, that it was customary for the then secretary to attest or witness the grants that were made from time to time? A. I think that has been the custom and is the custom now. It does not always follow, sir. I could not tell. The instruments after they were executed never came before the Board for inspection or investigation.

Q. The instruments had to be acknowledged? A. They were proved.

Q. And they were almost invariably proved before the Secretary? A. By him, do you mean?

Q. I mean the signatures acknowledged before him, and he did the proving? A. I am afraid, sir, the practice was to sign them and hand them to the Secretary, and he went and took the proof before a Master, but there was no formal acknowledgment before the Secretary.

Q. You can't recall why that practice did not obtain in this grant? A. No.

Q. Referring now to your newspaper article— A. Not my newspaper article.

Q. Well, your statement or interview, or whatever you call it, in the Hoboken Observer, under date of August 13, you say in regard to this Edgewater matter, "The Board acted upon the precedent established by the opinion of Attorney-General Stockton in the case of the Central Railroad." You mean, of course, the Navesink Railroad that we have been speaking of? A. Yes, sir.

Q. Have you made any examination of the archives of the Board since this matter came up? A. In respect to the Navesink Railroad?

Q. Let me finish. In respect to the Navesink Railroad to ascertain whether or not there is on file in writing an opinion of Attorney-General Stockton upon that matter? A. I saw the report of this matter in the newspaper, and I applied to Mr. Payne, the Secretary, prior to the last session of the Committee, I think on the same day or the day before, to inspect the minutes of the Board of the meeting at which this Navesink matter was passed upon. Mr. Payne asked me to excuse him from showing me the records at that time, as he was very busy indeed, and getting ready for the examination, and would do so at a future date. I called again at the office and he was not there, but I asked his representative, and the records were not there and I could not see them. It was a mere matter of personal interest, so I didn't go any further.

Q. Then you have not examined them, as a matter of fact? A. No.

Q. Although you tried to? A. As a matter of fact, my recollection is, that at the meeting when this license was granted to the Navesink Railroad, Attorney-General Stockton was present; that he came there and gave a verbal opinion to the effect that it was within the power of the Board to make this license under the circumstances. I may say, Attorney-General, if I may be permitted, that I was opposed to that as a legal principle, and was not in favor of the license at that time. My recollection is—you are speaking of something that occurred now some sixteen years ago—that it was then understood that the Attorney-General should file with the Board

subsequent to the date of its meeting, that same opinion in writing, and I had always understood that he had done so, and it has been frequently a matter of conversation with the Board that he had done so, but I didn't keep the record.

Q. Your present recollection is, that at the meeting upon which this grant was made, the Attorney-General was present? A. That is my recollection.

Q. I call your attention to the minutes of that time, the first meeting being page 132 in Minute Book No. 5, where the following record appears :

" Meeting of December 3, 1891.

PRESENT :

Commissioners Fisk, Ross, Reading, Herring, also Governor Abbett and Attorney-General John P. Stockton.

The minutes of the last meeting were approved.

Applications made by the Navesink Railroad Company for a license to cross the Raritan Bay and the Shrewsbury River, were taken up and considered, and after discussion were laid over to the next meeting.

The Secratary was directed to notify the shore owners who would be affected by such applications, that a meeting of the Commission would be held on Friday, December 11th inst., at nine o'clock a. m. when they would be heard in reference to the same. "

A. I see that carries out my recollection that the Attorney-General was present.

Q. But you observe that is not the meeting at which the grant was made? A. I didn't know whether this was considered at one or two meetings. I know the Attorney-General was there and gave an opinion, and my recollection is, verbally, and with the understanding that he was to put it subsequently in writing. My recollection is distinct upon that point, because I absolutely declined to sign it without the opinion of the Attorney-General.

Q. You observe at this meeting when the Attorney-General was present, nothing was done except to notify the shore owners of a meeting to be held at nine o'clock? A. I observe that this record says that nothing else was done ; a great many things were done that don't appear in the record.

Q. I call your attention to the next meeting of December 11, 1891. Present, Commissioners Fisk, Ross, Reading and Herring, also Governor Abbett. There is no mention of the Attorney-General? A. No.

Q. "The minutes of the last meeting were approved. Application No. 2 by the Navesink Railroad Company for a license to cross Raritan Bay, dated November 27, 1891, was taken up for consideration.

On motion of Commissioner Ross the price for 4,200 feet of said crossing was named at $3.00 per lienal foot.

Commissioner Herring offered an amendment to the motion of Commissioner Ross, that the price be fixed at $2.50 per foot.

The amendment was adopted by the following vote: Ayes, Commissioners Fisk, Reading and Herring. Nays, Commissioner Ross. The motion of Commissioner Herring to fix the price at $2.50 per foot, was then adopted by the same vote.

Application No. 3 by the Navesink Railroad Company for a license to cross the Shrewsbury River, dated November 27, 1891, was then taken up for consideration.

On motion of Commissioner Reading, the price for said crossing was named at $2,000, which was adopted by the following vote, &c.

The licenses for the above two crossings were ordered to be prepared in accordance with the form heretofore approved by the Attorney-General, at the prices above named, and that the same be executed by the Commissioners and laid before the Governor for his approval."

I have correctly read from the minutes all that is essential. A. I think so; I didn't follow you closely.

Q. So that it appears that at the meeting at which the record shows the Attorney-General was present, nothing was done in this matter beyond the direction to call a meeting at nine o'clock, and at the subsequent meeting the grants were approved, and so far as the record shows, the Attorney-General was not present? A. Is that a question?

Q. Yes. A. The record shows what the record shows. It shows in the record on December 11th, that something more had been done, that the license was to be executed in the form heretofore approved by the Attorney-General.

Q. It is not worth while to bandy words with me. I want to be entirely fair, but I want you to answer my question. I will have it repeated.

(Question read as follows):

"Q. So that it appears that at the meeting at which the record shows the Attorney-General was present, nothing was done in this matter beyond the direction to call a meeting at nine o'clock, and at the subsequent meeting the grants were approved, and so far as

the record shows, the Attorney-General was not present?" A. You have correctly read the minutes, if that is the question.

Q. Do you recall any single other meeting of the Riparian Commission at nine o'clock in Jersey City? A. I don't know, sir; I could not say about that.

Q. Can you recall why that meeting, when this unique and curious kind of a grant was going to be given, which was so important that it was deemed essential to have Attorney-General Stockton present, which was held at nine o'clock in the morning, for the purpose of permitting persons who were supposed to be the owners of the upland to appear— A. I do not.

Q. You have no recollection why the meeting was held so early? A. At that hour; no, sir.

Q. I hand you, Mr. Fisk, what are given to me by Mr. Payne as all the files in that case; please look at them and see if you can find among them any form of grant or proposed license submitted, or purporting to be submitted, by Attorney-General Stockton? A. I presume you had these papers, you can tell me whether there is such a paper.

Q. I am not on the stand. I don't find any. A. I don't know, sir; I will have to read these papers to tell you what they are. I don't know where they have been in the meantime or who has had them.

Q. I didn't ask you that, I asked you whether you find among those papers any opinion or statement by Attorney-General Stockton in the matter at all? A. You will have to excuse me, sir, until I look at them.

Q. Certainly, I ask you to look at them and see. A. I find here something that purports to be a partial form of license, with a memorandum on it in my handwriting, where I evidently made a suggestion that something should be inserted, and with your permission would like to read it.

Q. I am going to ask you about that paper; do you find anything else bearing on that? A. There are other papers bearing on this matter.

Q. Anything else touching upon Attorney-General Stockton, or a form submitted by him, or an opinion submitted by him? A. There does not appear to be anything here of that sort.

Q. You do, however, find what seems to be a form of license? A. A partial form.

Q. What is it endorsed? A. "Form of license of right of way of railroad across tide water." It does not refer to any railroad.

Q. In whose handwriting is that endorsement? A. I think R. T. Bacot.

Q. The main paper is in typewriting? A. Yes, sir; it appears to be so.

Q. Are there any interlineations? A. Some in lead pencil.

Q. In whose handwriting are those interlineations? A. I don't know.

Q. Are they in Mr. Record's A. I don't know. I am not familiar with his handwriting.

Q. In whose handwriting is the note beginning "Provided, &c.," at the bottom? A. That is in mine.

Q. Then the only form of license that the rocord discloses is a paper endorsed by Mr. Bacot, typewritten by somebody, interlined in somebody's handwriting, which you are not familiar with, and bearing a suggestion at the bottom in your own handwriting; is that right? A. I don't know about the record, that is all that is here shown.

Q. I say the record in your hand? A. Yes, sir.

Q. You are not, of course, bound by anything except what you are shown. I am showing you what I am told are all the papers on record in the case. You don't find any form of license prepared by the Attorney-General there? A. I do not.

Q. Are you familiar with Mr. Stockton's handwriting? A. I think I am.

Q. You find nothing in his handwriting, do you? A. No, these are mostly typewritten papers.

Q. Now, what else is there in the license to the Navesink Railroad, which constituted a precedent, as you say in your newspaper article, for the Edgewater Railroad, than has been produced here? A. What is that?

Q. What else is there in the license of the Navesink Railroad Company, than we have been discussing, which constitutes a precedent for the Edgewater grant that you subsequently voted for, and which you, in your article, say, formed a precedent for the Navesink Railroad grant? A. That was not my article, but what I mean to say is this: Before the Riparian Commission there were several applications for licenses of this character, and I want to frankly say, when this first application was made, my judgment as a lawyer was, that it was not competent for the Board to make such a license under the law as it stood, and it was for that reason that the Attorney-General was called in, and I declined to affirmatively act on the matter until his opinion had been obtained. I didn't think the license was worth anything then, and don't think so now. I don't think the Edgewater license was worth anything.

Q. Have you the Hoboken observer before you? A. No, sir; it is down here.

Q. At the bottom of the first column of your statement and at the bottom of the next to the last column of the paper you will find the following in quotation marks, purporting to be a part of your statement: "In the Edgewater and Fort Lee railroad case the rights of the property owners were not jeopardized, however, as there was a special provision in the license compelling the railroad company to get the absolute consent of property owners before doing anything." A. I never made any such statement as that.

Q. You did not? A. No; that is not the fact.

Q. That quotation purports to be a statement made by you, and you say it is not correct? A. It is not a correct statement; I think the reporter thought it was, but there is no such provision as that in the license and never was.

Q. I also notice that it appears in this statement that you say: "You acted in the Edgewater and Fort Lee case upon the precedent established by the opinion of Attorney-General Stockton in the case of the Central Railroad Company of New Jersey," by which you say you mean the Navesink Railroad Company. A. Yes, sir.

Q. That is your position, is it not? A. Oh, decidedly; yes, sir.

Q. You thought at the time that the license was made to the Navesink Company that it was a very curious thing, unusual, unheard of, and without the opinion of Attorney-General Stockton you would not have done it at all? A. Speaking personally, no, sir.

Q. I mean you, yourself? A. No, sir.

Q. The Fort Lee Railroad Company applied years afterward for its grant, and you were still of the same opinion, except so far as that had been overcome— A. Yes, sir; there had been two or three others.

Q. You said here, in this article, that you relied upon the precedent of the Central Railroad case? A. Outside of what is said in the article, I did.

Q. You said that in the article? A. I don't remember, I did as a matter of fact rely on the advice received from Attorney-General Stockton.

Q. When the Edgewater case came up, did you look to see whether there was any written opinion to validate any such extraordinary thing as this? A. I don't recall that I did; Mr. Payne knew about it.

Q. Never mind about Mr. Payne, he is not on trial. A. I did not, it was a matter of common knowledge of the Board for years

that this precedent had been established, it was talked over many times.

Q. You said that you didn't think that the Edgewater and Fort Lee grant amounted to anything? A. If you want my legal opinion, I did not.

Q. Yet you voted for it? A. Oh yes; I don't recall whether I did or not; I am not positive about that. I can't recall that I was present when it was considered.

Q. Do you remember what you did say to the reporter which he misconstrued and mis-reported, in the language which I have read, which I will re-read: "In the Edgewater and Fort Lee Railroad case, the rights of the property owners were not jeopardized, however, as there was a special provision in the license compelling the railroad company to get the absolute consent of the property owners before doing anything." A. I presume I said, I don't recall it distinctly—but that, of course, is foolish on its face—it is not the fault of the reporter, it was a technical matter and very hastily taken, and he didn't catch what I said, that under this license it didn't jeopardize the rights of the shore owners because the railroad company could not build its railroad in front of any shore owner without first getting his consent, as was decided in the Schaumberg case, and was well known and established law.

Q. The Schaumberg case was long after this? A. Not after this interview.

Q. But after the Edgewater grant? A. Yes, sir.

Q. The same condition and the same situation existed in the license given to the Navesink Railroad that existed in the license given to the Edgewater Railroad? A. Yes, sir; with one exception; that the license to the Edgewater Railroad had a limited time for the completion of the road and the other did not; I think otherwise they were substantially the same.

Q. You are quoted as saying in this same newspaper interview, on the second page of the article: "That I always considered that $1,500 was a big price to pay for such a piece of paper. I was in the Board when the first license was granted. The Edgewater and Fort Lee Railroad is a branch of the Erie Railroad constructed to run north from the Susquehanna Railroad terminal, tapping the land below the Palisades to which there was no communication by either land or water." The grant, I think, with the exception which you have just stated, to the Navesink Railroad, is identical with that to the Edgewater. Do you consider that the Navesink Railroad, therefore, got anything at all? A. Well, I think that under those licenses—if you are asking my opinion—that all that is

acquired is the right to go to the shore owner and make a bargain with him, if you can, to get his permission to cross the land. I don't think that it gave any right to build any road as against the rights of the shore owner.

Q. You knew, and have known ever since the license was given to the Navesink Company twenty years ago, that that road was not only occupying, but daily occupying the grant from the State which you said you didn't think was worth the piece it was written on. Did you ever make any move to oust the company from the State's land? A. I don't think there can be any move by the State to oust them, the movement would have to be by the shore owner, he can eject them. I don't know what arrangement the Navesink Railroad made with the shore owner, but I notice in the bundle of papers you handed me, certain papers which purport to be signed by the shore owner.

Q. Notices to the shore owner? A. No, consents.

Q. Look at them. A. (Witness looked at them.) I don't know whether these are the originals or copies, they appear to be consents.

Q. What are they? A. Shall I read them?

Q. Yes. A. This reads: "We, the undersigned, being severally the owners of land fronting on the Raritan Bay between the Atlantic Highland dock and the Navesink Park property, hereby state that we are familiar with the route of the railroad which the Navesink Railroad Company propose to build in front of our said lands; that we consent to the building of said railroad in front of our said property, and consider the said railroad will be of great advantage to the Atlantic Highlands and to the lands aforesaid, because it will make the same more easily accessible from New York City and elsewhere;" purporting to be signed by five individuals. And here is another one:

"This is to certify, that the following persons, owners of property fronting upon the Raritan Bay, between the Atlantic Highland dock and the Navesink Park property have consented by agreement, within their own special knowledge, to the construction of the Navesink Railroad in front of their respective properties, and upon the route shown upon the filed map of said company." Then follows some name.

Q. Purporting to be signed by Mr. Curtis? A. Yes.

Q. You would call that a legal consent? A. No, I don't know that the other is.

Q. That looks to me as if it were a genuine consent. A. I don't know why it should be there; it may be a duplicate.

Q. Now, I want to know, in view of your testimony, and also your statement in the newspaper: "I always considered $1,500 was a big price to pay for such a piece of paper," whether you meant by that statement to say that you considered that the grant to the Navesink Railroad Company, and the grant to the Edgewater Railroad Company, which, for the purpose of my inquiry, are identical, except the two years' limitation clause, were only pieces of paper that were not worth anything as against the State? A. You are asking my legal judgment?

Q. Yes; you have given that view there as to the Edgewater? A. I didn't give that view, I said, that they were worthless. I said that I thought $1,500 was a full compensation for the rights acquired under any such paper. I can't be held to the reporter's language. This gentleman saw me, I have no doubt of his accuracy of recollection, but it was recollection; he didn't take down my words.

Q. Have you ever taken any pains in any newspaper to deny, contradict, or in any way correct the authorized statement purporting to be issued by you while this investigation was in progress, which announced in flaming big type: "Willard C. Fisk Defends the Former Counsel of the State Riparian Board?" A. I had no reason to; I didn't write those headlines.

Q. You have taken no pains to correct this statement, which is in quotations, and purports to be your statement concerning facts that have been brought out by this Committee? A. Oh, no, sir.

Q. You let it go as accurate? A. I didn't think that any statement I made in the newspaper was sufficiently important to do that. I am very glad to state to this Committee what I know.

Q. Notwithstanding you have been a Commissioner and Chairman of the Board for several years, and during the time in which some of the matters under investigation were being considered? A. I thought the proper place to make any statement was here.

Q. I want to know whether you now, whatever you said to the reporter, whether you now say to the Committee, that the papers issued by the State to the Navesink Company and to the Edgewater Company, were or were not valid papers, so far as the State was concerned? A. I think, and I don't know how much my opinion is worth as a lawyer on that question—I think that the papers in both instances are good as against the State, but are not good as against the rights of the shore owner. I may be mistaken about that.

Q. Is it not true, that until within six months that particular question was never determined by the court; that the decision of the Supreme Court, in Justice Fort's opinion, published in the 62nd

Atlantic Reporter in the Schaumberg case, was the first announcement to the effect that a license to a railroad company without notice to the shore owners was void? A. That is true, but that was not the first time I had that opinion.

BY SENATOR AVIS.

Q. The words "notice" and "consent" have both been used upon the same point apparently; I would like to know whether Mr. Fisk's idea is that the shore owner should have notice or should give consent? A. I think, Senator, that under the proceeding taken for these licenses, that these notices that were given in the Navesink Highland case, did not affect the shore owner in any way whatsoever, didn't bind him at all. That unless by duly executed consents or grants, in reference to his right to apply for a grant, you could not take away his title. That was my opinion when the application was originally made. I didn't think it was properly made under what was then the 36th Section of the Railroad Act, and was opposed to it on that ground, and only signed it on the opinion of the Attorney-General.

Q. In other words, you don't think there was any legislative action at that time which would allow you to give a certain notice to the shore owner and cut out their rights and make a grant to a railroad company similar to the Navesink Railroad company? A. Not similar to that.

Q. I am speaking of that. A. No, you could not do it by notice.

Q. And the same principle would apply to the Edgewater railroad? A. No notice would permit the state to issue a paper like that under the law, as I understand it.

BY SENATOR WAKELEE.

Q. Does it not put the shore owner in the position that he had the privilege of bringing proceedings to establish his rights? A. Practically no, because the railroad would not dare to put its structure there—could not afford to do so—especially in view of the present decision of the court.

Q. Suppose they had gone on and the owner had physical notice? A. He would have to bring ejectment, I think, or by some other proceeding he would have to remove it. If I may be permitted, as expressing my view at the time of the Navesink Highland case—these papers I haven't seen for sixteen years, but I find among the papers some proposed form of license, in which I have made a suggestion in lead pencil, evidently I wanted it incorporated, in which I say, "Provided that nothing in this license contained shall in any manner affect the rights of any shore owner, as now existing under the laws of this state." So at the time that was my view.

BY ASSEMBLYMAN REED.

Q. Will you please tell me what part of that grant belongs to the State, from the dock all away around to the Shrewsbury or Navesink Park? A. I don't recall that that was a continuous strip, it may have been separate strips.

Q. Do you know what part of the consents were obtained? A. I don't.

Q. Do you know whether a settlement was made with the property owners? A. I should think they have made a settlement or they would be disturbed in their possession.

BY SENATOR WAKELEE.

Q. Suppose the railroad company had dealt with the shore owners, obtained their permission and consent to the building of the railroad; after that the shore owners applied to the State to purchase the riparian rights in front of their property; would the fact of the railroad cutting off appreciate the value of the State's right to some extent, in fixing the value that the State would eventually get? A. The answer to that is this, that if the adjoining owner should apply to the State for a grant, and say to the State, "You must not charge me as much as ordinarily, because the railroad is there," the answer is that you have been paid for that by the railroad; the railroad could not be there except by your consent, and you must have charged the railroad whatever that is worth.

Q. Would not the State at that time be obliged, as a matter of law, to fix the then present value of the State's right? A. The then present value is a very uncertain thing, at any time, and it is quite conceivable, particularly in this case with which you are familiar, the Edgewater and Fort Lee situation, it it quite conceivable, that the building of the railroad very materially increased the value of State's land, and the land of the adjoining owner, by affording railroad communication for the construction of factories and things of that kind. That is a matter of the conditions there.

BY ATTORNEY-GENERAL McCARTER.

Q. Is it not true, that in June, 1904, you as attorney—after you had left the Board—as attorney for Harry K. Stevens, applied to the Board for a grant for property across which the Edgewater Railroad Company had already been granted its license under consideration? A. I don't remember the name, but I did make application for some owner on that section.

Q. Didn't you state on the occasion that you appeared before the Board at that time, that the presence or the right of that railroad to be there was a detriment in value to the upland, and to the property of the owners, and, therefore, you were entitled to have a

grant for less than otherwise would have been the case? A. I don't know whether I did or not. That was not the particular point I urged for a reduction of the price.

Q. Can't you recall that on the occasion when you appeared representing Harry K. Stevens in June, 1904, you stated to the Board, as you had a perfect right to state— A. As a matter of argument, yes, sir.

Q. You were not connected with the Board, you were there as counsel for the applicant, but I ask you if you didn't state at that time, that these licenses, which had already been given to the Edgewater Railroad Company, were a detriment in value to the property that you were then seeking to get a license for, and urged that as a reason why you should get your grant for less money? A. I can't tell you, sir, whether I did or not. Very likely I did, if there was anything to be urged to reduce the price. Very likely I did. That is what I was employed to do.

Q. If you did say that, you were speaking in a Pickwickian sense? A. No, not at all; I was presenting the views of my clients.

Q. They evidently thought it was a detriment? A. I don't know; that is what they told me they thought.

Q. You believed your clients? A. Oh, well, of course. In that particular case you refer to, the question that was up was the reduction in price that should be made by reason of the license that was on that property, that was quite extensive in value.

Q. Of course. In the Edgewater and Fort Lee case, and the Navesink Company, could the railroad have proceeded to construct and build, even if they had the consent of every owner, without the consent from the state? A. No, sir.

Q. Now, if you felt as you say, and your handwriting on the paper you produce seems to corroborate fully, what don't need corroboration, your views that you thought that notice was necessary, etc., how can you account for that nine o'clock meeting? A. I beg your pardon! I didn't think notice was necessary, and I don't think so now. I don't think any act that the Riparian Board may do—I didn't think it then and don't now—and that opinion has been confirmed by the opinion of the court—that any act of the Riparian Board could affect in any way the right of the shore owner, and he could not be affected. I thought so then and I think so now. This matter of notice of meeting comes back to me now by the record. I don't recall it otherwise.

Q. You signed this grant or license to the Navesink Railroad Company for a mile and a half of shore front, and you did the same

thing in the Edgewater Railroad Company case, without being sure that the owners were notified? A. I didn't see any necessity for notice. Do you see any?

Q. What is your opinion about that? A. Notice or no notice the State could not cut off the right given by the Legislature to the shore owner; and this does not apply to the provision of the law for six months' notice to the owner to take a grant or the applicant will—this was an application not for a grant or lease, but for a license to cross the lands of the State under the provisions of the Railroad Act, which, apparently to me meant a crossing and not along the shore. That is my understanding and I think that is yours. I am not speaking as counsel for the Edgewater and Fort Lee Railroad Company; I am speaking as an ex-member of the Board of Riparian Commissioners. In that same matter I think I called your attention, privately, before this investigation commenced, and without any reference to it, before any committee was appointed, to the fact that the Attorney-General had given an opinion in that matter, and I think you told me you had been unable to find it?

Q. Yes. Do I understand that the other members of the Riparian Commission agreed with you that a license along the shore for a mile and a half, or, as in one case, three miles, was not a crossing? A. No, they did not, and I withdrew my opinion very modestly when Attorney-General Stockton gave a contrary opinion; I didn't set mine up as against his. I was not employed by the State as counsel for the State or as Attorney-General.

Q. What counsel was concerned with the Edgewater case, or the case which I think was a three mile grant? A. No, sir; I think it was not.

Q. How long was it? A. It was isolated pieces. The pieces may have extended that distance. There were thirteen separate tracts, disconnected tracts.

Q. They are along the river? A. Yes, sir.

Q. What counsel advised the Board at that time? A. None, as I remember.

Q. You say the opinion of Attorney-General Stockton was relied on; you found no written opinion? A. I don't know whether there is one there or not; I don't know about that; there was an opinion of Attorney-General Stockton.

Q. But that was a crossing? A. Not in the Edgewater case.

Q. In the Navesink case? A. Yes, that it came under the Thirty-sixth Section of the General Railroad Act.

Q. He didn't put that in writing? A. That is my recollection;

he was to put it in writing; he came there personally and gave his verbal opinion and was to file it in writing. That is the only thing that is distinct in my recollection about that transaction, that I would not sign it without his opinion.

BY SENATOR MINTURN.

Q. Is there any record of his coming there on the minutes? A. Yes, sir; he was there the first day when this matter was considered.

ATTORNEY-GENERAL McCARTER.—He appears not to have been there on the day the grant was made.

A. It was really made the first day. It was only postponed for this hearing.

ATTORNEY-GENERAL McCARTER.—I only speak from the record.

A. The record shows that he theretofore approved the form.

BY ATTORNEY-GENERAL McCARTER.

Q. I notice that the license to the Navesink Company is dated December 11, 1891. I show you the document, which you are probably familiar with, known as Index No. 2, which seems to be a record of transactions by the Board. Please look at it and tell us what were the rates that were being charged about that time for grants at the Atlantic Highlands? A. I am not familiar with this record.

Q. Look at Index 2, page 2, Curtis and Leslie, and see if you find a grant to Curtis and Leslie? A. Here is one.

Q. Is not that $5.00 per foot in each case? A. That is what it says here.

Q. You recognize that as a document of the Board? A. I have no doubt this is correct.

Q. From that we conclude— A. That is not quite right; it says $5.00 per foot and $100. per acre in addition.

Q. Whatever it is? A. And the above says $5.00 per foot and $100. per acre.

Q. Then it is $5.00 per foot and $100 per acre? A. Yes, sir.

ATTORNEY-GENERAL McCARTER.—I will state to the Committee that the Curtis and Leslie grants were at Atlantic Highlands.

Q. Does that show there? A. It says Raritan Bay, does not say the location.

Q. Do you know how many feet was actually covered by the Edgewater and Fort Lee license? A. No, I do not; you mean feet along the shore?

Q. Lineal feet along the shore? A. I do not; the Secretary has the figures.

Q. Do you remember how you arrived at the $1,500 claimed for the grant to the Edgewater and Fort Lee Railroad? A. I don't know that I arrived at it at all, and I don't recall that I voted for the license. You must remember that the record of the Board of later years does not record the vote of the members. Many of these grants were carried by the vote of two members and the Governor sometimes. Sometimes by three members and the Governor. I don't recall whether I voted for that or not. I recall the meeting at which it was considered, and Governor Murphy presided at the meeting, and there was quite an influence brought there, publicly by the shore owners, urging the Board to grant this license, showing that it would be of great value to the shore owners.

Q. You got in the fact that Governor Murphy was there. Now, let the Committee thoroughly understand that at the meeting that the Edgewater grant was made, Governor Murphy was present. Mr. Record made a great point of that, and Mr. Fisk makes a great point of it, so that it is thoroughly understood, so that we will say that future witnesses need not state that he was there. Now, kindly answer my question. Did you vote or not for the Edgewater license? A. I can't tell you.

Q. Did you ever, previous to the Navesink Railroad Company case, give a license to any company, like the Edgewater license? A. I think the Navesink was the first of that kind.

Q. Had there been any before? A. I think not.

Q. Had there been any since? A. I think there had been.

Q. Which? A. I don't recall the name.

Q. Didn't you state to the reporter something that led him to state that the Edgewater license relied upon the precedent of the Navesink? A. Whether I did state it to him or not, it did.

Q. What precedent was there between? A. I don't recall, sir, I don't remember how many of those licenses there were.

Q. Have there been any but three? First, the Navesink; second, the Edgewater, and third, the Jersey Shore line? A. I can't tell you; there have been a number of applications under that law—

Q. I don't wan't to cut you off, but I don't wan't to take time. A. I want to say there had been a number of applications under the railroad act besides those that you referred to, but they were not all cases where they ran parallel along the shore. There have been lots of cases where it was fairly a crossing.

Q. Do you remember the application of the Atlantic Ocean Railroad? A. Where was that?

Q. At Atlantic City. A. Yes, sir.

Q. That was refused. A. Oh, yes, sir.

Q. Under the opinion of Attorney-General Stockton? A. I don't know it was not granted. I was opposed to it.

Q. Do you recall that was referred to the Attorney-General and a written opinion submitted? A. I do not.

Q. Do you recall that the written opinion gave as a reason that a grant along the shore is not a crossing? A. I haven't seen the opinion.

Q. You did not recall that between the time that the Navesink grant was made and the time that the Edgewater application was made, Attorney-General Stockton had united with Counsel Record in an opinion that the Thirty-sixth Section of the Railroad Law didn't authorize a grant along the shore? A. I don't recall that in connection with the Atlantic City Railroad. That was an application for a trolley road, as I recollect it, to run a trolley road along the shore outside of the board-walk at Atlantic City.

Q. You didn't look up the files to see if any opinion was on file upon this question? A. Oh, no, sir.

Q. I want you to refresh your recollection and tell us whether you did or not vote for the Edgewater Railroad? A. I signed it.

Q. Do you remember voting against it? A. I do not.

Q. Have you any doubt about your voting for it? A. I probably did, I can't recall, impossible to remember that. I might say, Attorney-General, that it was the practice of the Board, irrespective of what vote was cast, to sign all the papers after it was once passed. The members who didn't vote for it, signed it as well as those who did.

Q. I want you to give your best recollection whether you did vote for it or not? A. I probably did.

Q. You say it was a trolley road; I call your attention to the petition; that does not say so? A. I don't know what it says; I know it was a trolley road, and I know who was behind it, and I was against it. The purpose was to run a trolley road outside of the board-walk at Atlantic City, which would cut off the Atlantic ocean from the board-walk. It didn't run anywhere and didn't commence anywhere.

Q. Now, Mr. Fisk that is all right— A. I only want to give my recollection about it.

Q. You have no recollection of its being referred to the Attorney-General for an opinion? A. I have not; it was not made.

Q. Assuming that the Edgewater railroad was voted for by you, and you are on record in certain cases as not voting? A. Only in one or two cases where clients of our office had business before the Board.

Q. You find no such record in this case? A. That was not a client of ours.

Q. I present the application to you from the Edgewater and Fort Lee Railroad, and call your attention to the fact that the applicant named in the application is willing to pay the sum of $1,500, which is the sum that was exacted. A. This does not seem to be the application.

Q. What is it? A. The grant; the price is $1,500.

Q. Do you recall the application was for the same sum? A. I don't think it was, I can't recall. It was not customary for the applicant to put the amount he was willing to pay in his application.

Q. I call your attention to the application, in the Edgewater and Fort Lee Railroad Company, which says: "Your applicants believe that if, in the judgment of the Commission, it is their duty to make some substantial charge for the license, $500 per acre would be all that they would be called upon to charge in a case of a grant in this locality, carrying with it all the rights and uses of commercial water front property; that the area of the strip of fringe of the shore sought to be obtained is 3¼ acres, and your applicants respectfully represent and believe that the sum of $1,500 will be an adequate and just compensation in view of the benefit to inure to your applicant, the upland owners, to the State and to the communities affected." This is signed "R. O. Babbitt, counsel for applicant." The grant which I show you shows that it was for $1,500 in this case, which seems to be quite curious, the Board acquiescing with the view of the applicant that it was worth $1,500. Was the Board accustomed to take the opinion of the applicant as to what the State should get? A. No.

Q. Do you know why in this case, which was a grant of three acres as appears by the petition, of a curious character, the State Riparian Commission, you to the best of your recollection, voting in the affirmative, and certainly signing the license granting the same for $1,500— A. You are mistaken, there was no grant made.

Q. I am not bandying words—a grant or license? A. I don't want to bandy words either, but the application refers to the fact that $1,500 carried the full right; there was no grant made; there was a license made to cross the State's lands.

Q. To build a railroad? A. Yes, sir.

Q. For three acres in the State's land for $1,500? A. Yes, sir.

Q. Where was that land? Just tell the Committee where it is located. A. Along the shore of the Hudson River.

Q. Opposite what street in New York? A. 135th street, perhaps, along there.

Q. It is very valuable land, is it not? A. The land there is valuable, very valuable. The license to cross the land is another question, Attorney-General; a question of judgment.

BY SENATOR MINTURN.

Q. What is the difference in the legal effect between a license under such circumstances as these, and a grant made by the Riparian Commission? Is the license revocable?

MR. McCARTER.—No, sir.

A. This one is.

MR. McCARTER.—But in all other respects, it is similar to the license of the Navesink Railroad Company, which has no terminable clause, and a two years' revocability depends entirely upon the idea that the road is not constructed. Assuming that the railroad has been constructed within two years, I don't see how it it could be revoked.

SENATOR MINTURN.—I don't see, either.

BY MR. McCARTER.

Q. Suppose you answer Senator Minturn's question; in practical effect, what is the difference between what you have called a license and a grant? A. A license conveys no title to the fee. It is a license to maintain and operate a railroad, and assuming for a moment that the State has the power to grant that right as against the adjoining shore owner, the right is only for the right of way and not for a fee title, and if it is abandoned for railroad purposes the title would revert to the State, the same as in an ordinary case of condemnation for railroad purposes. On the other hand, the license is only the permission of the State to deal with the shore owner. It does not take away from the shore owner his right to apply to the Commission to get a grant for the land, including the land upon which the railroad license lays, and it is a different matter from giving a man an absolute grant for a piece of land.

Q. So long as the railroad is operated as a railroad, it may be for 999 years, and it may be forever and a day; the license is operative so far as the State is concerned, to permit the operation of a physical railroad and the maintenance of it during all that time? A. Yes, sir; as against the State, but not as against the shore owners.

Q. And so far as anybody else is concerned, as against the State; nobody can use that land except the railroad? A. That is my judgment. You are asking a lot of legal questions that you can, perhaps, answer better than I can.

Q. Practically, so far as the strip is concerned, it is to all intents and purposes an exclusive right to own, use and operate that strip of property regardless of the rights of anybody else? A. No, sir.

Q. Who would have any right? A. The right is reserved to the State to grant that to somebody else.

Q. Does it say so in the license? A. No, by law.

Q. Does it say so in the license? A. No, I think that is the legal position, don't you think so?

Q. I don't know, I can't understand the right at all. I think the whole thing is a sham and a fraud. A. What do you mean by a fraud?

Q. I say the whole thing is a sham and a fraud, the idea of that being a crossing. You asked me about that being a crossing. A. I agree with you; I don't think that's a crossing.

Q. Still, I am not giving my opinion to amount to anything any more than my individual opinion which was asked for. I can't conceive how the statute, which talks about draws and bridges, and permits crossings of rivers, can apply by the most brilliant imagination, to a strip three acres in extent along the shore of a river, not crossing the river at all, having no draw? A. Mr. Attorney-General, I agree with you, and I did agree with you sixteen years ago.

Q. And I have yet to see anything to make me believe—except as Mr. Fisk told me, and I believe he believes that Attorney-General Stockton said it applied, but that he never wrote a word to that effect, on the contrary, he wrote just as I say. Now, Mr. Fisk believes it, I am not questioning his belief, I would not for a moment. He is a gentleman, and I have great confidence in him.

MR. FISK.—Thank you.

Q. I believe he believes that Attorney-General Stockton said something, but he never wrote that? A. The present secretary can remember it very distinctly.

Q. The record is in on that point.

BY SENATOR MINTURN.

Q. You speak of the rights of the shore owner, how are they protected by the Commission? A. As against the license granted?

Q. Yes. A. They are protected, not by the Commission, but by the law. The court has held in the case which Senator Wakelee has before him, to that effect.

Q. Did you give notice? A. There is no notice you can give them and take out a license like that. It is a license purporting to be given under a section of the Railroad Act, and not under the Riparian Act, which provides that if a railroad desires to cross navigable waters of the state, it must first apply to the Riparian Commission, and pay such compensation as they think proper. There is another provision which provides if any one wants to take a grant of land, not the owner of the shore front, he must give six

months' notice that he is going to apply for it; if the shore owner don't take it, then he, the applicant, can have the grant.

Q. I am familiar with those provisions, but I am trying to understand how the shore owner, under a grant of this kind, is protected in the rights which he has under the Riparian Act? A. The case which is before Senator Wakelee—I think he has the Schaumberg case—decides that as against the rights of the shore owner to apply, or have six months' notice, that a license of this character gave no right.

SENATOR WAKELEE.—It decides that six months' notice must be given. A. You can't give six months' notice and take this kind of a license, but a regular grant.

SENATOR WAKELEE.—Does not this case hold that six months' notice must be given in each case?

A. My opinion is, that six months' notice under the Railroad Act would not be good. You would not get anything. You would have to give it under the Riparian Act.

BY MR. McCARTER.

Q. I have had a calculation made, and I find that the length covered by the thirteen separate tracts in the Edgewater and Fort Lee license amounts to 5,837 feet, and I have also had a calculation made that 5,837 feet at $1,500 amounts to 25½ cents per foot. Can you recall, assuming those figures to be accurate, a single grant or license in that locality at any such rate as 25½ cents per foot, other than the one in question? A. There is no similar license in that locality, except the Shore Line Company license, and I don't know what that amounts to.

Q. Is not the same right on the Hudson River worth much more than it is on the south shore of the Raritan Bay where the Navesink license was made? A. Now, I don't know, I am not arguing that question, I don't know that it is.

Q. You voted for both? A. If you would like me to tell you frankly what I think was the view I had at the time this passed, I will do so.

Q. I will let you tell that later. I want you to answer my inquiry whether you didn't think at that time, and don't think now, that the same character of license on the Hudson River, opposite that part of New York that you have described, is worth more than such a license on the Shrewsbury River down by the Atlantic Highlands? A. No, sir, I do not.

Q. Which is worth the more? A. I think the State should receive more for the Navesink license than for the other.

Q. Why? A. My reason is this, that the Navesink Highlands,

where the railroad runs along the shore, there the shore is exceedingly abrupt, used for private residence purposes, and the water in front is very shallow for a long distance out. There is no commercial activity at that point, and can't be any for hundreds of years to come, from the natural condition of it. Along the Edgewater tract there is a different situation, it is very valuable land for development for manufacturing purposes. It is right opposite the city of New York, and deep water, and there is only one thing that prevents the development of that section of the State for manufacturing purposes and that is the utter absence of railroad facilities by reason of the Palisades being on the other side, and the building of a railroad there would enhance tremendously not only the value of the private owners, but the value of the lands of the State.

Q. Have you voted for grants along the Shrewsbury at anything like rates comparable to your vote for the grant along the Hudson? A. This is not a grant, and cannot be compared with the price charged for grants.

Q. Intrinsically speaking, there is, of course, no comparison between the value of the upland in the location of the Edgewater road and in the location of the Navesink? A. No, not at all; this is much more valuable.

Q. How can you account for the fact that you secured $2.50 per foot, or $14,592.00 for the State from the Navesink Railroad, and you only got 25½ cents a foot for a similar license to the Edgewater Railroad? A. I have tried to explain that to you, but perhaps the explanation is neither satisfactory nor complete. I am giving you the views that were urged on the Board at the time this was before them. This meeting was held with the full Board present, and a number of gentlemen of prominence and interest in that locality appeared before the Board. I recall that P. Sanford Ross appeared—

Q. And Governor Murphy? A. He presided and voted for it and was there. I don't want to shelter my vote behind Governor Murphy's. Mr. Ross appeared and other gentlemen, and urged upon the Board the granting of this for nothing, expounding the great desirability of getting a railroad connection there, and at once their land and the land of the State would enhance greatly in value. Whether that was so, or whether it appealed properly to the judgment of the Board is a matter of judgment now.

BY SENATOR WAKELEE.

Q. Did you get the opinion of any of the outside property owners as to the value of the land to the State? A. I don't recall, I may say, as far as I was concerned, it didn't make much difference to me

whether they got $1,500, $500, or $2,500. I didn't believe that this paper which this railroad got—that is my private opinion as a lawyer, which I was not paid for to give to the State—I didn't believe that they got anything that was of any material value, and I don't think so yet. I may be wrong about it. Circumstances seem to have proved it, because afterwards, when the license expired I was no longer a member of the Board, and I was employed by the general counsel of the Erie Railroad to appear before the Board and get an extension of this license. I presume, I have never been employed by them in any other matter before or since—but I presume they thought I was acquainted with riparian matters and might be of service. I applied and got the extension for nothing.

BY SENATOR MINTURN.

Q. Assuming that this license would be valid and legal as against the State, upon what theory was the valuation of the land applied for fixed? Was there any comparison made with the upland or the value of the remaining shore front? A. You can't make a comparison with the upland or the remaining shore front in a thing of this kind. You can't do that, you can't measure it as you ordinarily would so many acres of land, at so many dollars. It is not a condiiton of that kind.

Q. How did the Commission reach a conclusion—upon what basis? A. I can't tell you how the Commission reached a concluion.

MR.McCARTER.—The attorney for the applicant said that seemed fair, and the Commisson adopted his views.

Q. There was no figuring done whatever or investigation made by the Commission? A. I don't know about that.

Q. That is what I want to get at. A. I don't know, I can't recall particularly. They always went into counsel after hearing each applicant or anybody else who desired to be heard, they took the engineer and the counsel and had a conference and discussed this matter and sometimes there would be quite a marked difference between members of the Board; sometimes a difference which could not be reconciled.

Q. My point is this, here is a conveyance of land by license, which if irrevocable was equivalent to a grant? A. No, sir.

Q. If irrevocable? A. I don't agree with you, Senator, it was not because the adjoining owner could apply to the State of New Jersey for that very same land, not land outside, but that very same land, could get a grant from the state and would have a superior title to anything the railroad acquired.

Q. If that license were legal and irrevocable, you don't mean to

say that the adjoining owner could oust the state or the state's licensee upon a legal license properly granted? A. I mean to say they could under that license today.

Q. That is the law today? A. The courts have so decided.

Q. I am assuming that the license was legal. A. But it was not.

Q. But as far as the Board knew it was? A. Except as against the state's right; and I have tried to make it clear to the Commission that I had that opinion a great many years ago, and had it when this was passed.

BY MR. McCARTER.

Q. Suppose the riparian owner was dead and could not have been notified; so far as everybody, including him, was concerned, it was tantamount to a grant? A. I don't know that it was.

Q. I can't see it in that way. A. I know as a practical question in this case, it was not of any value.

Q. Ex post facto, by a decision rendered within three months; that is what you mean? A. I mean to go further, I mean to say that when the last renewal was made of the license to the railroad company, and I was no longer a member of the Board, and was requested to appear before the Board, I then advised the railroad company that it was of no value, maintaining what was afterwards held by the court.

Q. The railroad company has spent a large sum of money upon the faith of this license? A. No; they have in no instance spent a dollar on lands where they have not secured the right of the shore owner.

Q. You appeared as counsel for the second renewal before the Board on behalf of the railroad? A. Yes, sir.

Q. And was not one of the bases of that application the ground that they had spent hundreds of thousands of dollars which will be rendered futile if this grant was not renewed? A. Yes, sir; but that was not your question.

Q. And haven't you made an application to me as Attorney-General, to whom the Board have referred this? A. That was not your question; you asked me if they had not spent a large sum of money upon lands upon which the State has granted a license. I said they had done so in no instance except where they had secured the right of the adjoining shore owner; in those cases where they haven't got his rights they haven't put a dollar on the land.

Q. You say "by getting his right," don't you mean condemning his right? A. No, sir; they can't condemn his right.

Q. Didn't they urge before the Riparian Commissioners when the renewal was asked two or three years ago, that they had spent a

large sum of money, and had been held up in proceeding with the road, and hadn't been able to complete the road in time, and it would be inequitable for the State not to renew it? A. Yes.

Q. What money had they spent? A. I can't give you the figures.

Q. On what property? A. Mr. Payne has a complete report of that; it is at your service.

Q. Do you mean to say that no money had been spent on the land for which the license had been given two years before? A. In no case except where they had obtained the grant or quit-claim of the shore owner, and a waiver of his rights to apply to the State.

Q. They recognized the fact that this strip didn't cover all they owned, and they needed to cover the right of the owner of the upland? A. No, sir; you misunderstand me.

Q. I don't intend to. A. I say this right of way is in some instances above high water mark, and in some instances entirely below high water mark. They have not spent any money on land below high water mark where they didn't own the adjoining upland, unless they had obtained from the owner a waiver of his right to apply to the State.

BY ASSEMBLYMAN CROWTHER.

Q. You say they have spent no money except on such property which they had acquired by quit-claim or had acquired the right of the upland owner. Now, I want to ask you if they had acquired the right to all this property in that way, did they still need this license? A. Yes, sir; oh, yes, sir; because the State could say, "You must not go there." I think there is no doubt about that.

BY ATTORNEY-GENERAL McCARTER,

Q. How can this company, which you now represent— A. I want to say, Attorney-General, it is hardly fair to bring in the legal matters since I have left the Board.

Q. I don't want to do that, it was you who first suggested that. How could that company afford to spend hundreds of thousands of dollars upon this railroad, if they could not ultimately condemn the State's rights? A. Simply as a matter that the State would act in good faith in. I think it has been held distinctly that they cannot condemn the State's rights.

Q. Now, the matter they got from the State was one of great value? A. I prefer others to give an opinion.

Q. Absolutely essential to their scheme? A. This scheme was not essential to their railroad.

Q. I say the obtaining of said license was absolutely essential to the scheme? A. They had to get some permission or they could not build the road. They had no power to condemn over this right of way.

Q. We have seen that you charged for this right of way from the state 25½ cents a foot; are you aware that the Board about the same time made grants to John Eisele for property in this neighborhood at $60.00 per foot? A. I don't remember exactly, but that would be approximately the price.

Q. Can you give this Committee any reason why you, as a member of the Board, voted for this license at the rate of 25½ cents per foot, when you charged John Eisele for a grant of land in the same neighborhood and at the same time at the rate of $60.00 per foot? A. As you know very well, assuming the $60.00 and the 25 cents are correct figures.

Q. That is the assumption? A. Yes, sir; that is hardly a fair comparison for this reason: In the Eisele case, or any case where the grant is made in the regular way, in the first place an absolute grant is made, fee title to the land; in the second place, it carries with it access to deep water, and the right to build piers. This strip that we are talking about is not valuable as a water front. It is disconnected with the rest of the land. This little strip along there, the Committee see it on the map, is about 30 feet in width, and varies from that to 5 or 6 feet. If anyone had an absolute deed to it it would be of no value for any use or purpose except this particular purpose of building a railroad. It is not connected with the water, you could not reach it from the water, but in these other cases it is not connected with the upland, could not reach it from the upland. In this other case the man got a grant directly from high water mark out into the Hudson River, out to deep water. How far it went out I don't know, it may have gone out two or three hundred feet. That is very valuable, and beyond that is the right to build and maintain wharves and piers to accommodate shipping. It is quite a different matter to compare land of that character with a strip along the shore, and which, taken by itself and considered as so much land, is of no practical value whatever.

Q. Do you recall a decision by Vice Chancellor Reed some years ago in an application in reference to the Legislature limiting the right of the Riparian Commission to make grants at Atlantic City on the ocean to nobody except to the city for park purposes, in which he determined that under that provision of the Constitution, which devoted the riparian lands to the school fund of the State, it was incompetent for the Legislature or for the State itself, to make any disposition of the State's lands thus devoted, which shall not be for that consideration? A. I recall the decision, but I don't think that it quite held that. I don't think that the Constitution itself devotes the State's lands to the school fund.

Q. Was not the decision directly upon that point that the requirement of the law, that the Riparian Board should make no grant of ocean front property except to the city for park purposes, was in contravention of the constitutional purpose which devoted the land to school purposes? A. I don't think it was. I may be in error. I don't think the constitution itself devoted the lands to school purposes. I think the constitution says you can't divert the assets of the school fund, whatever they may be, and the Legislature has devoted the proceeds of the riparian lands to the school fund.

Q. It was the constitutional provision which devoted the proceeds of the land to the schools, which he relied on? A. I think so.

Q. Didn't you realize at that time when you voted for this Edgewater license, that you had no right, on similar principle, to rely upon the alleged benefit to other lands that would come by the introduction of the railroad? A. No, I don't think so.

Q. Didn't Mr. P. Sanford Ross, who you say was present, have an interest in land up there? A. Yes, sir; he was a large owner of land up there.

Q. Do you think it was becoming for the Commission; of which you were a member, to be governed by the wish of private land owners, whose property was going to be benefited, in fixing the price which the State should receive? A. I can't tell what is becoming to the Commission, I can speak for myself.

Q. You have spoken as Mr. Ross was there, as a great reason why? A. I didn't give it as a great reason, I said the Commission had a large number of property owners in that vicinity who urged upon them the necessity of the building of this road.

Q. It was that, among other things, that induced you to put the price down to $1,500? A. I didn't put the price down.

Q. You voted for it? A. I don't know whether I did.

Q. You said a little while ago that you concluded you did. A. I voted for the license; I don't know that I voted for the price.

Q. The license includes that? A. When it comes to fixing the price, there would be five members there, and they express their different views, and all sorts of prices might be suggested by the different views of the members, and finally the view of some one member would prevail, have three votes if there were five members there. I don't know whether I voted for the price, $1,500; I can't recall it. I may have done so or not. I voted for the license, but after that is determined the entire Board signs the license without respect to what price they had in mind.

Q. Do you think that any other inducement existed in the minds of the Board, as far as you can recall, to let this license go at the

figure which the applicant mentioned in the application, $1,500, than the fact that if granted the neighboring property would be increased in value? A. I can't tell you about the mind of the Board; I know about my own mind.

Q. Was that one of the reasons that induced you to do so? A. I don't recall whether I was in favor of $1,500 or not.

Q. Did that enter into the question? A. The fact that it would improve the other property, that undoubtedly entered into my mind in considering favorably the application of the railroad company to build a railroad along there; it seemed to be the general desire of the residents along there.

Q. And you thought that the State should consider the increment that should come to the value of the property of Mr. Ross and Mr. A and Mr. B, and Mr. C, in giving this curious-but-once-before-granted right of property in this land, rather than any other question? A. Not at all, sir. You must remember that the State was the owner of a large amount of land up there, and if this would increase it in value, that is a matter of opinion—it would greatly increase the value of the State's land.

Q. Still you remember that you were before the Board on behalf of Harry K. Stevens; speaking as a lawyer then, you said that it hurt it rather than benefited it? A. I did not.

Q. Didn't you state before, that on June 30, 1904, representing your client, and believing what he stated, that as an advocate you stated to the Board that the presence of that Edgewater Railroad was a detriment to the land of Stevens, and, therefore, you ought to get a less price? A. You have asserted that I did, but I don't know that I did.

Q. Will you say you didn't? A. No, sir.

Q. Didn't you apply on behalf of one Harry K. Stevens, in June, 1904, for a grant for land near this very locality, across which the Edgewater license goes? A. I applied for an applicant, I don't recall his name, for a grant of land above the Fort Lee ferry at Edgewater, and it is in the location where this grant goes. I think the name was Stevens, but I am not certain.

Q. Did you or not, at the time you made this application, state that the presence of this license to the Edgewater and Fort Lee Railroad was a detriment to the property, and, therefore, they should give you a grant for a less sum? A. I don't recall, whether I did; if I did, I did so as representing my client and not as a member of the State Riparian Board.

Q. I show you an application on behalf of Harry K. Stevens signed Willard C. Fisk; that is his application? A. I presume it is

Q. That is the man you represented? A. Yes, sir.

Q. Who is Harry K. Stevens—who was he? A. Is it necessary that this should be gone into?

Q. Yes, I want to know who he was. A. I think he is employed in the office—Senator Wakelee, what are the gentlemen that are interested in the ferry there; the firm in New York of engineers, interested in the right of way there?

SENATOR WAKELEE.—Ford, Bacon and Davis.

A. He was clerk in their office.

Q. Who are they? A. Engineers; they are interested in the ferry and trolley company at Fort Lee.

Q. So that this application was not really made on behalf of Harry K. Stevens, but was really made on behalf of whom? A. No, it was made on behalf of Stevens.

Q. Did he want it for himself? A. No, he turned it over to a corporation afterwards.

Q. What corporation? A. I have forgotten the name; I incorporated it, but I have forgotten the name.

Q. The New York Improvement Company? A. I don't recall the name, that may be it, or Harbor Improvement Company.

Q. You now state, as I understand it, that you don't remember making that statement before the Board? A. Oh, Attorney-General, I can't remember whether I did or not, quite likely I did, and just as likely I did not.

Q. Don't you think it is likely that you did, that you came before the Board representing Mr. Stevens, as you had a right to? A. If there was any argument I could use to get them to reduce the price—

Q. And would not that be a natural thing to say, that land across which the railroad runs between the upland and the water, is worth less to the man, and he should pay less for it, than land that has no railroad? A. That would be all I could say to them, if I said anything on the subject. Probably they replied, "You are mistaken, because it increased the value." I must say, Attorney-General, I am very glad to render you or the Committee any assistance in my power, or give any information in my power, but I must confess that I can scarcely see why inquiries should be made into matters of my private clients, who they are, and what connections they have and I doubt whether it is a matter of propriety, as a lawyer, to give you that information.

Q. I don't want to ask anything that is improper, and I don't want you to betray your professional secrets, but I do feel that it is a subject of legitimate inquiry about how this $1,500 was reached,

and I am going to ask you whether in granting that you subsequently voted for, between the time of the granting of the Fort Lee license and the time that you left the Board, you demanded an increase in the price because of the previous license to the Edgewater Company? A. I don't remember how many applications there were after that, Attorney-General, and I do remember further than that there had been for years a gradual increase in the price of land along the Hudson River. There had been a gradual increase there for many years, and as to this $1,500, if you will permit me, Attorney-General, to say once for all, I don't recall whether at that time I favored $1,500 or $500. I know that the majority of the Board finally decided on $1,500. Whether I voted for it then or not, my opinion then was, and my opinion now is, that the $1,500 was an adequate, if not a large, price for the rights acquired under this license. My judgment may be very poor about that, but that is my judgment. That is all I can say about it. I don't want to hedge about it; I don't know what I voted for, it may have been $500.

Q. But the sum of $1,500 was finally fixed upon and you voted for the granting of the license at that sum? A. I don't know that I did, the granting of the license and fixing the price are two different matters, but whether I did or not, I then considered $1,500 an adequate price.

(At this point a recess was taken until two o'clock.)

Q. I turn now to some regular grants that were made during your tenure of office, to get at the prices that were asked from time to time. Do you remember an application made by one Charles F. McKenna, resulting in a lease to him at $30.00 per foot? A. I don't recall the time or place. I know there was such a lease.

Q. And the fact that the price was fixed at $30.00 a foot? A. I could not say that, the records will tell.

Q. Book 4, page 166, do you remember where that property was? A. That was at Edgewater, immediately adjoining the ferry, south of the Edgewater ferry.

Q. I direct your attention to the Minute Book No. 4, page 166, meeting of June 4, 1887, before your term, an application was made and was granted at $30.00 a foot to Mr. McKenna for this land at Edgewater right next to the ferry? A. I think there were two or three grants or leases made to them there; which one this is, I don't know.

Q. Were you a member of the Board at this time, 1887? A. I think not.

Q. And I think you represented Mr. McKenna? A. I don't recall that.

Q. They fixed the price at $30.00 per foot? A. That was in 1887, yes, sir.

Q. Do you remember a grant to the New York, Susquehanna and Western Railroad in 1893? A. I remember there was a grant to them, but the date I don't recall.

Q. By which a rate of $53.25 was fixed? A. I can't recall.

Q. Do you remember the property, where it was? A. Generally.

Q. Where was it? A. It is on the Hudson river, some distance south of this McKenna grant.

Q. About how far? A. I could not tell you; I think it was near the Susquehanna terminal; I think it was a lease.

Q. That was a pretty valuable part, was it not? A. That is valuable land there; yes, sir. Perhaps the land on the Hudson river is the most valuable of the state's land, of any.

Q. $40.00 per foot, and $1,000 per acre makes, I think, about, according to the calculations I have, $53.25 per foot in all. Page 204 of the Minute Book No. 5 is the application of the New York, Susquehanna and Western Railroad, and the rate was $40.00 per foot and $1,000 an acre; that was at the rate of $53.25. That was a great enterprise, was it not, the Susquehanna and Western Railroad? A. I don't know whether this covers their terminal.

Q. Do you recall that grant, when a grant was made to the Sushanna and Western? A. I could not tell you.

Q. Assuming it was a great grant then? A. All right.

Q. What was done by the company? A. I don't know. I never saw it after it was improved.

Q. Do you share with Commissioner Cloke in the idea that consideration should be given to the proposition to improve by manufacturing or other improvements in estimating the figures to be charged for grants and leases? A. In some instances—that policy was inaugurated at certain times of the Board's existence, but there have been very many varying policies since I have been in the Board in reference to price.

Q. There have been? A. Yes, sir.

Q. Can you give any reason for that kind of variation? A. Yes, sir.

Q. What is it? A. The policy of the Board with reference to charging the price for riparian lands, was almost altogether determined by the then incumbent of the office of Governor. When a new Governor would come in, it was customary for the Board to have the secretary present to him all the general information as to

the policy of the Board and the situation, and at the first meeting at which the Governor would be present, to express to him what the situation was in different localities, and give him a general idea how matters stood, and my experience has been that the different Governors had different views as to such matters. For example, Governor Abbett in his second term, when I first became a member of the Board, adopted the view that the prices for the lands were entirely inadequate, and insisted upon a very material and marked raise in the prices of lands, and the prices were marked up, particularly on New York Bay and the Hudson river, and in some cases ten times what they had been charged before ; and his policy seemed to be that it was not important to make immediate sales of lands, it would be better to hold the lands for higher prices, and these prices were put on them. That resulted in a year or so, almost the entire business of the Board ceased. There were no sales at those prices. Originally, when I first went on the Board I found that the custom had been to divide off the State into certain sections and to put prices upon those sections. Subsequently, that policy was changed, and it was decided that no fixed prices should be put upon the land, so that an applicant coming to the secretary could be told that land at such a place was $5.00 and at such a place $25.00, and that each application should stand upon its merits. At another time the system was inaugurated of not only charging so much per foot front on the exterior line of solid filling, which was the general policy of the Board, but also calculating the acreage for the land included within the lines of the grant ; charging so much per foot and also so much per acre. That policy was inaugurated and was partly, if not altogether, abandoned afterwards ; the reason being that the acreage in practice was shown to be not a fair criterion for the price of land. There might be a grant of land where the acreage was really a disadvantage, the more acreage there was the less value to the grant, the object being to reach deep water. For instance, on the Newark Bay, the Bayonne shore, it is a very long distance out to deep water. If you charge acreage there, the nearer a man was to deep water the less acreage, the more valuable his grant would be, as the expense of reaching deep water would be very great. And so I might enumerate various policies that were enforced at different times, but as a rule, the Governor of the State indicated the general policy to be pursued.

Q. Do I understand that during the twelve years of your services you sank your individual views as to the proper sums to be charged, in the views of the new Governor who came in, and who might not know anything about it ? A. Not at all.

Q. Is that so of your fellow members? A. Not at all.

Q. The Governor was merely ex-officio member? A. No, sir; my experience was that Governors Abbett, Werts, Griggs and Governor Voorhees, I think they were active members of the Board and took a direct interest in the Board. Governor Murphy didn't do so much, he didn't attend many meetings.

Q. You don't understand that the fact that the Governor was ex-officio a member of the Board required any less attention or care on the part of the four salaried Commissioners, do you? A. Not at all, sir.

Q. Do you mean to say that the Governors that you referred to overruled the Commissioners upon their views? A. Not at all. The action of the five members of the Commission was not always unanimous by any means, but it had to be like the Court of Pardons, it had to meet the approval of the Governor or there could be no action. If he didn't approve as Governor, not as a member of the Board, if he didn't approve the action of the Board, it went for nothing.

Q. That is so, he had to sign the grant? A. He had to approve the action of the Board by signing the grant. That was not perfunctory on his part by any means.

Q. Did you have any fixed plan or scheme during any given year to keep the price uniform, and to keep pace with the growth and increase in values? A. The prices were constantly changing, and the general tendency was to increase prices, that is, after the very violent increase inaugurated by Governor Abbett, following that, when Governor Werts came in, the prices were lowered because the sales stopped.

Q. Is it not a fact that prices varied, went up and down like mountain peaks, without regard to the sequence or their relative location? A. I don't think so; I think in each case the Commissioners honestly tried to exercise an intelligent judgment on the matter. You cannot compare, you will find by experience, grants even alongside of one another, immediately adjoining. The physical conditions may be so different as to make one more valuable than the other. Again, there were certain cases where perhaps the state—although personally I never favored that policy—where perhaps the state had the advantage of an applicant, where the applicant was compelled by circumstances to take his grant, no matter what the state charged him. He was in a position where he had to have the land, and perhaps in some cases the price was raised to meet that situation, although I frankly say, that personally, it was not a proper policy for the state to pursue.

Q. Did you employ any appraisers to give you the value of the upland? A. No, sir.

Q. Did you always visit the locus in quo before voting for a grant? A. Not always.

Q. How then did you fix their values? A. It was the growth of a system of a number of years, Attorney-General, and perhaps the fair way to show what was the test as to the value of the land was, where the Board found that in a locality where they had fixed a general range of prices, the applicant invariably refused the grant at those prices, they fairly concluded that the prices were too high.

Q. I want to illustrate it by some actual sale; you fixed the price in 1887 on the Charles McKenna application at $30 per foot; you had a sale in 1893 to the New York, Susquehanna and Western Railroad Company at $53.25 per foot. Do you recall the application and the deal that was made with Cord Meyer at $50.00 per foot? A. No.

Q. In May 11, 1893? A. Not by name; no, sir.

Q. Do you remember where the Cord Meyer property was located? A. I do not, sir.

Q. Application dated May 11, 1893, from C. Henry Meyer for grant in the Hudson River, rate $40.00 per foot, and $1,000 per acre? A. That was at a period when the acreage charge was in operation.

Q. I understand that, calculating that out amounts to $50.00 per foot. Let's see if we can't locate that grant on this map.

MR. PAYNE.—It is No. 14 on the map.

Q. It seems to be at a point in Bergen County opposite the point between 110th and 120th street, New York City? A. Of course, asking me about that case is futile, because the records show I was not present at the meeting.

Q. Quite right, I am simply getting at the rates that were charged. A. I am speaking from recollection only from the record.

Q. So we have there $50.00 per front foot? A. Yes, sir.

Q. Do you remember that your partner, Mr. Randolph Parmley, made application in 1895 again on behalf of Mr. Charles F. McKenna, and that a grant was made to him for some property at $43.34 per foot? A. When was that?

Q. January 11, 1895? A. If it was, I took no part in it. That land must have adjoined land that he got a few years before for $30.00 a foot.

Q. You remember there was such an application and such a grant? A. He is a present client of mine, and I know he owns land there. That sum would show an increase, quite a substantial increase between the former grant of $30.00.

Q. Do you remember an application by one Hinner, in 1895, of $50.00 a foot? A. I do not, Attorney-General. I am so constituted that I cannot recall proper names.

Q. Do you remember an application by Ellis and Company, at $70.00 a foot, $1,000 an acre, which amounts in all to $87.00 a foot? A. I do not; I might say, in my judgment, that generally on the Hudson River, commencing at the State line on the north, the price should increase as you go south to the Hudson County line.

MR. McCARTER.—Mr. Payne, will you point out the Ellis and Company grant?

MR. PAYNE.—No. 17 on the map.

A. I recall that, looking on the map.

Q. Can you explain now, assuming it to be true, as the record shows, that the Hinner grant was made at $50.00 per foot— A. You haven't called my attention to that.

Q. That was made at $50.00 per foot, you a member of the Commission at the time, the Ellis and Company grant was made at $87, the Charles F. McKenna grant was made at $43 per foot, and the Cord Meyer grant—all in the same general neighborhood, at $50.00 per foot, and all within three years of one another? A. So far as the $87.00 a foot grant is concerned, that is a case of the example I have spoken about before. That is a case where I think the State took advantage of the necessities of the applicant.

Q. Which one is that, the Ellis and Company? A. Ellis and Company, they had to have that grant if we charged them a million dollars a foot practically, from their situation and what they had to do. My recollection is, that they had an incumbrance on the State's land, and they had to have it to make their title good; that is my recollection as to that grant. As to the proportion of the value between McKenna $30.00 and $40.00, and the grant down here at $50.00 and $60.00, in my judgment, assuming that either figure is correct, that proportion of difference of value is correct in reference to the different location. I think the further north you go the less valuable is the land.

Q. Do you think you always carried that out in execution? A. Tried to.

Q. You say in the Ellis and Company grant at $87.00, you took advantage of the necessities of the case? A. I didn't say I did.

Q. The Commission of which you were a member, you voted for it? A. I don't know whether I did.

Q. The record shows that you did. A. I don't know that it does.

Q. Then you don't know whether I tell the truth. We will offer it in evidence, and if I am mistaken, I am mistaken. A. I don't think it shows the votes of any of the members.

Q. I want you to say what the necessities of Mr. Ellis were. A. I am only speaking from impression, and I don't want to be quoted exactly on that matter. There was one case very near the Susquehanna grant, and my recollection is that the price was put very high, and perhaps higher than anything that had been done in that vicinity before or was done afterwards, and my impression is, this was the case. I may be wrong about that. I have had no opportunity to examine this record, and my recollection is not good enough to speak without authority. But there was such a case there and Mr. Payne can verify me.

Q. What was this necessity? A. My recollection was, that either by the necessity—either they had already built upon part of the land of the State in ignorance, thinking they had a grant, or they had been required to make some change in their plant that made it necessary to have this additional land. I might say frankly, that there were cases of that kind occasionally through the State, and personally I never believed it was proper or dignified for the State to take advantage of them in dealing with its citizens.

Q. Do I understand your theory that the further north you get the more valuable? A. Yes, sir.

Q. Bear that in mind when we come to the Morris Building Company. You have spoken of the Ellis and Company grant of $87.00; is it not a fact that another grant was made to Ellis and Leonard, No. 13? How did that stand?

MR. PAYNE.—Adjoining it on the north.

A. I don't recall that, but that being so, perhaps bears out my recollection that the price was jacked up for special reasons.

Q. I call your attention to Minute Book No. 6, page 249. We find in the matter of the application of John Ellis and Company for riparian rights on the Hudson River at Edgewater, the Board decided to make a grant in fee at $60.00 per foot, with no charge for acreage. Can you explain why, in 1899, the grant then made was made to John Ellis and Company at $60.00 a foot, without any charge for acreage, and apparently on May 28, 1896, three years before the grant had been made to the same people, for $87.00 per foot? A. I don't know whether it is the same people.

Q. Ellis and Company? A. I have tried to recall, and I think that the grant of $87.00 per foot was one of those special cases that I have referred to, where the Board raised the price above the usual price. We had some cases where people had encroached on the State's land for years, and if by inspection we found an encroachment, we found them there, we would add to the price, as payment to the State for the occupation of the land which they had had for some years before. We had cases like that.

Q. Is it not a fact that all that was up in the Ellis case was that they had a grant, or wanted a grant next to the Susquehanna Railroad, and that it was considered a valuable grant, and they applied for it, and it was given to them for $87.00 per foot, and two years afterwards, the very next land was given to them at $60.00, and that you were present at both meetings? A. Excuse me for asking there if your object is to show contradiction of action as a member of the Board; permit me to say that it is utterly impossible for me, not having had my attention directed to these special cases, and you having had an opportunity to examine the papers and recall my recollection, to give you reasons in all cases. I could summarize in some. It may be in this case—I don't know that it is—I can't recall it, but it frequently was the case that a grant immediately adjoining lands that had been granted for instance at $50.00 had for physical reasons on the ground, a reef of rocks that had to be dredged out before they could get good water, that didn't obtain on the adjoining land, or other special reasons that the inspection disclosed, made a difference in the price; and that was the reason why, early in my career as a member of the Board, I objected to this method that was then in vogue of fixing prices by the yard or the mile of the State's land. I believed that each application should be considered on its merits; and the special conditions should be considered. To say from Castle Point in Hoboken to the county line, land should be a hundred dollars or $500 a foot, was illogical and improper.

Q. Have you any personal acquaintance with this party? A. Yes, sir.

Q. You remember the property where the New York and Susquehanna got their grant? A. Yes, sir.

Q. And you remember immediately north of that are the two grants to Ellis? A. I see that by the map.

Q. Is it not true, in your familiarity with the actual situation, that there is no difference whatever in the physical contour of the land; there are no rocks? A. I can't tell you, I have no information before me now that will give me any opportunity to explain that to you. I can't tell you the facts that were before the Board when this grant was made.

BY SENATOR MINTURN.

Q. Do I understand that the Commissioners made personal investigation on each application? A. Not in all cases. They did in many cases, either by a committee of the Board, or sending the engineer to make a report, or by the entire Board. Of course this inquiry, so far as that was concerned, it was confined entirely to the

Hudson River ; the jurisdiction of the Commission extends all over the State from Cape May up, and they made visits to all parts of the State. For example, there was no occasion to make visits to Atlantic City to ascertain anything. When application came for a grant along the beach front, several members were perfectly familiar with the situation, and it was not necessary to go there.

BY ATTORNEY-GENERAL McCARTER.

Q. Unless there be some fact such as you have spoken of, either the necessity of the case, or rocks, or some such thing as that, assuming now that I have the figures correct, you can recall no reason why, on April 25, 1893, a grant was made to the New York, Susquehanna & Western at the rate of $53.25, on May 11 of the same year to Cord Meyer in almost the same locality, at $50.00. A. That was a little further north, quite a little distance.

Q. Try to be as familiar when I ask you, as when you interrupt—A. I thought you were asking me.

Q. Now, on January 11, 1901, to Charles F. McKenna, at $43.00 per foot; on January 31, 1895, to Hinner, at $50, on May 28, 1896, to Ellis & Company, $87.00, and November 23, 1899, to the same concern, immediately adjoining, at $60.00 ; what we want to know is the rationale or intent that governed the Board, to have this jumping up and down, some of it according to your statement, was more valuable than others, and yet, there was this change in prices? A. All I can say is this, that from my familiarity with the location and the action of the Board, omitting the $87.00 grant adjoining the $60.00 grant, the proportion of prices that you have mentioned in these different locations, namely, the Susquehanna grant at $53.00, the Cord Meyer at $50.00, the McKenna at $50.00, and the Ellis grant at $40.00 and $50.00, if any one of those prices is right, the others are in proportion. I am not arguing as to any of those, they are in proper proportion. They don't show a jumping up and down in my judgment. The $87.00 grant, if I recall the particular case in mind, was special. I can't speak for the other members of the Board. I don't know that I favored any of those prices.

Q. I now turn to the Morris Building Company grant, do you remember that? A. There was such a grant.

Q. Dated November 22, 1900, at $60.00 per foot, at 20 off for building purposes ; do you recall that rate ? A. I remember there was such a grant.

Q. Can you locate that on this map? A. If it is marked here we can find it.

Q. It is further south? A. Yes, sir.

MR. PAYNE.—It is No. 9 on that map.

A. I think if I recollect correctly, I didn't have anything to do with that.

Q. The price of $60.00 with 20 off for the erection of works worth $500,000? A. I didn't have anything to do with that.

Q. The French have a maxim, "Que s'excuse s'accuse." I didn't insinuate that you had anything to do with it. A. I beg your pardon, I thought you were asking me what I could testify to. I didn't participate or have anything to do with that grant.

Q. Were you not present at the meeting? A. I don't know that I was; I may have been.

Q. Don't the record show as a matter of fact, and does not your newspaper statement show, you were present and you asked to be excused from voting? A. I don't think I ever said anything like that to the newspapers.

Q. Is it not a fact? A. If it is the Morris Building Company, I would not have anything to do with it, because I have been connected with them in some legal business, and it was highly improper to have anything to do with it.

Q. Nevertheless, the rate fixed was $60.00 with $20 off if they should build. A. If that is what it shows.

Q. Was that more valuable property than the Ellis and Leonard—I am not impugning you. A. I can't compare it with the other, because I am not familiar with it. I might say that there along the Hudson river the mud bottom is very deep. I know it is so in the case of the Morris Building Company land, and it is very much more expensive to put in crib work and pilings than at other sections, because of the depth of the mud, before you strike rock. I know that is so because of other business matters I have had in connection with contracts for the improvement of that land.

Q. Can you give any explanation from the standpoint of the Board why the Morris Building Company grant was sold at $60.00 with 20 off, if they built it up in 1900, when the grant to Ellis and Company had been made to Ellis and Company at $87.00? A. I have already referred to that Ellis and Company $87.00 grant as one that in my recollection was a special price at which no other sale was made in that vicinity, since that was done for special reasons, which I can't recall the details of, but it was a case of the necessity of the applicant.

Q. I will leave that out. Can you tell why the Board, just how the Board justified the granting to the Morris Building Company at $60.00, with 20 off, making only $40.00 per foot, when in 1899 they had granted to Ellis and Leonard at $60.00 per foot? A. The same price, Ellis was not under contract to improve.

Q. Was it not a great enterprise? A. He had a plant there. I don't think this additional land implied any additional improvement.

Q. Did you sanction that, that because the enterprise was to come there and built up a plant, that therefore, they could let something off? A. Not altogether, but I did in some cases.

Q. Was that the ground upon which it was urged in the Morris Building Company's grant, that they should get less? A. I didn't appear for the Morris Building Company and didn't participate in it. You will have to ask the other members of the Board what influenced them in making that price. I had nothing to do with it. The first case we had of that kind was under Governor Abbett's administration, on Arthur Kill, where the price was fixed and a rebate made, if a certain amount of money was spent on the land within a certain time. As to the advisability of that policy, that is another question.

Q. Now, I understand that your statement is, that the Morris Building Company grant was made $60.00 with $20 off because they proposed to put a large manufactory there? A. I didn't make that statement, you did, Attorney-General; you said they were going to spend $500,000.

Q. I said so? A. Yes.

Q. When? A. A few minutes ago.

Q. We will take the records. A. I said I had nothing whatever to do with it, if you wanted to find out why that was done you would have to ask the other members.

Q. At a meeting held November 22, 1900, there was present, Voorhees, Fisk, Holt and Cloke, "The application of the Morris Building Company for a grant on the Hudson river was presented. Application stated that the land under water was to be used in connection with the establishment of a large manufacturing industry; that in consideration of the purpose to which the lands applied for were to be put, the application asked such reduction in the price as seemed proper. After discussion the Board fixed the rate at $60.00 per foot, $40.00 to be paid unconditionally at the time of the delivery of the grant, and $20.00 per foot being deposited to the credit of the Riparian Commission on the following conditions: That if the applicant shall expend on the land granted, or on the adjoining upland the sum of at least $500,000 within eighteen months from the date of the grant, the said $20.00 per foot shall be returned to the applicant; otherwise, the amount so deposited shall become part of the purchase price of said grant. At his request Commissioner Fisk was excused from voting on the above matter." That is the matter to which I direct your attention.

You appear to have been present and spread upon the record your request to be excused from voting? A. Yes, sir.

Q. That was because you were interested in the application? A. I was not interested in the application. My firm had incorporated the company known as the Morris Building Company, and it seemed improper for me to take any part in any matter they had before the Board, and I asked to be excused.

Q. The only interest you had in the matter was that your firm of McDermott and Fisk had incorporated the Morris Building Company? A. That is inaccurate, I think.

Q. That is what you said. A. I want to correct that. I don't think we did incorporate the company, I think we represented some of the parties that sold them the upland; but in any event, my firm had some legal connection with the matter that it struck me it would be improper to have anything to do with it.

Q. As a matter of fact, did the Morris Building Company itself improve that land? A. I believe it did, sir, I want to make it plain that I was mistaken in saying that we had ever represented the Morris Building Company; we did not. We represented the owner of the upland and sold the land to the Morris Building Company; that was our connection with the matter.

Q. Didn't the same persons, whether it was the Morris Building Company or somebody else, own or control two other tracts immediately contiguous to the tract in question, and only needed a grant in front of this property in order to complete their plan; was not that the fact? A. I can't tell you about that. I think there was one piece adjoining that they owned. I am speaking with a very hazy recollection about that.

Q. Is it not a fact that the real owner, both to the adjoining tract and to the tract in question, was the Standard Oil Company? A. I don't know about that.

Q. Or the New York Glucose Company, whose office is at 26 Broadway, which is one of the subsidiary companies? A. I never came in connection with them in connection with this land.

Q. And didn't the New York Glucose Company make all these arrangements about depositing the $40.00 per front foot, and didn't they also close up the final matter? A. I don't know; that is done entirely with the Secretary of the Board.

Q. If you were interested, don't you know whom your interests were with? A. I tried to correct my first statement, I was not interested for the Morris Building Company, never did any law business for them. My legal interests had been for the owner of the upland that sold to the Morris Building Company.

Q. You didn't vote for it; don't you know that it is a matter of fact that the New York Glucose Company, which is a subsidiary or branch of the Standard Oil Company, having its office at 26 Broadway, already owned the adjoining tract and the adjoining riparian rights, and that in the name of the Morris Building Company this application was presented, and this grant made at $40.00 per foot, provided a large manufacturing plant should come, and that the large manufacturing plant that came was the plant of the New York Glucose Company, which was erected not only on the tract in question but on the other tracts that were already there? A. I know nothing of the business or relations of the Morris Building Company, the Standard Oil Company, or any of these matters you refer to. I can tell you, if it is a matter of any interest, what my firm's connection with it was. We represented the owners of the adjoining upland, and I think also the owners of an adjoining piece of land under water. My negotiations were with the lawyers who sold this property, who they were I don't know and didn't know until you told me.

BY SENATOR MINTURN.

Q. Who represented the petitioner in that matter? A. And my recollection is they would not buy our land unless they could get the grant from the State for the rest of the land. The title was passed by the Title Guaranty Company. I was present at the time the title passed, representing the vendors, and got the purchase price for them. That was my connection with it. I had nothing to do with the Morris Building Company.

MR. McCARTER.—I will state to Senator Minturn's inquiry, that there is a name on the application, and it appears to be signed Steele and Otis, 32 Nassau street.

A. That is the firm; they represented the purchasers, they never disclosed their principal to me.

BY MR. McCARTER.

Q. I show you a little sketch; see if that is of sufficient particularity to recall the situation, and that the tracts in red colors show what was already controlled by the interests, which, in the name of the Morris Building Company, were now seeking this grant; and that the tract upon which the word "water" is printed in red, is the tract in question for which you preferred not to vote? A. Not preferred; I didn't vote.

Q. Well, and didn't vote because of your interests? A. I had no interest, but I thought it would be improper; it made no difference to me what they charged for the grant.

Q. That sketch represents the situation? A. I could not tell you, sir.

Q. Did you or not have any professional interest in this thing? A. I am trying to recall the fact.

Q. Look at these letters and see if you did not represent the grant and didn't advise the grant and tell what was to be done? A. I had no interest professionally in the Morris Building Company. What I had was this, as I tried to explain. I made a mistatement when I started; I represented the vendors of the adjoining upland, and, I think, the adjoining tract under water—I am not sure about that—to the Morris Building Company. The price was something like a hundred thousand dollars; I don't recall exactly. The title was passed at the New Jersey Guaranty Company, representing Steele and Otis, lawyers, and we had to secure the titles from these different owners in order to deliver good title, and that was done at that office, and I represented the vendors, received the purchase price, and my recollection is that they were unable to make the sale to take the property to the upland until a grant had been made securing the riparian rights from the State. They wanted to know what the grant was going to cost them before they took it.

Q. You apparently overlooked the grant and saw that it was in legal shape on behalf of somebody, and gave directions as to the character of the grant, and desired to inspect it before it was delivered and the money paid in. I want to know if you didn't know at that time that that was the New York Glucose Company, a branch of the Standard Oil Company, who already controlled the property shown in red, the white portion being the one in question? A. I don't quite see the point of your inquiry, whether I knew or not, but I am trying to tell you frankly all I know about it. I was in communication with Steele and Otis and whom they represented they never disclosed to me. I heard afterwards casually that they were some branch of the Standard Oil, but I can't testify to that. had no knowledge about it or about that Glucose Company.

Q. You haven't answered my question. A. I tried to.

Q. Is it not true that you knew that this grant which was given for $20.00 less than the property nearby— A. Was made to a concern that controlled the adjoining land?

Q. Yes. A. No, I don't recall that I knew that.

Q. You don't know that? A. I don't recall now that I knew it.

Q. If you did know it, you didn't bring it to the attention of your fellow Commissioners? A. I took no part in this at all.

Q. Didn't you feel it was your duty as a Commissioner at $1,500 per year, to bring to the attention of the Commission some perversions or mis-statements that were made? A. What was the perversion?

Q. Were you justified in remaining silent and not voting if a grant was put through on facts that were not the real state of the case? A. I don't know that there was any representation not in accordance with the facts.

Q. Did you bring to the attention of your fellow-commissioners the fact that it was not so that a new industry was coming to this tract, but that a new industry was coming on the whole tract of which this was only a part? A. I don't know that I had anything to do with them. I don't see what difference it makes if the industry was not coming there without this grant; I don't quite catch the point.

Q. Didn't you know who Steele and Otis were? A. I had never met them before this transaction.

Q. Didn't you know that they represented the New York Glucose Company? A. No, sir; I did not. I don't quite know the point you want to get at; I will be glad to assist you.

Q. The point I want to get at—apparently you did not know as much about it as I assumed you did—the point I am getting at is, that this idea that this great interest was to come there and put up a plant that would amount to $500,000, was a beautiful fiction; the plant was about to come, and they owned all that red property, and they were sneaking through a grant on practically false representations? A. I can hardly think that is so for this reason: that they would not purchase the upland from the client of my firm until a grant would be made to them by the Commissioners, and they found out what the price would be; and they would not buy our upland unless they could have a grant with it. And furthermore, the fact that they did build the plant is so, because the certificate of the engineer of the Board, and the secretary, that they had spent $500,000 must be on file or the money could not be returned to them.

Q. Here is the certificate; that is the certificate of the New York Glucose company? A. No; it is not.

Q. Look at it and read it. A. This is not what the Board founded their action on.

Q. Read it. A. This is not what the Board founded their action on. This is addressed to the Secretary of the Board, dated September 4, 1901. It says, "Your recent letter"—

Q. Read the heading. A. "New York Glucose Company, 26 Broadway. Mr. John C. Payne, Commercial Trust Building, Jersey City, N. J.: Your recent letter addressed to Mr. Gaunt, asking for information regarding the amount of money expended on our plant at Shady Side, has been referred to us, and we enclose herewith a

statement which we hope will give you the desired information. Very truly yours, New York Glucose Company." I can't make out the signature attached to that. His estimate amounts to $595,000.

Q. Supposed to be the expenditures which "we," the New York Glucose Company, have spent on our plant at Shady Side ; that was this plant ? A. I never saw this before.

Q. So that now it appears that the New York Glucose Company did build that plant. I refer you to one of the letters written by yourself and addressed to Mr. Payne, dated November 16, 1900. A. I didn't read that before.

Q. Read it aloud. A. "Jersey City, November 16th, 1900.

JOHN C. PAYNE, ESQ.,
Fuller Building, City.

Dear Payne :—I enclose a copy of the application to be made by the Morris Building Company for the grant on the Hudson River, drawn in accordance with our understanding this morning. The original has gone to New York to be signed, and I will give it to you as soon as returned. I notice that in these two old descriptions the location of the lands are differently described, the first tract being in the Township of Ridgefield, and the second tract in the Township of Hackensack. I don't know what the name of that particular part of the world now is, but you can doubtless tell from your records, or Olendorf can tell you over the 'phone. The figures as you gave them to me this morning are as follows : Consideration for the grant $13,544, of which 190 1-10 feet cover the Martin title, amounting to 7,604, and 148 5-10 feet cover the Melville title, amounting to $5,940. The amount to be deposited as a forfeit is $6,772, being 338 6-10 feet at $20.00 a foot. Will you let me see the grant as soon as you have it prepared ? Date it November blank.

Yours truly,
WILLARD C. FISKE."

Q. Whom did you represent when you wrote that letter ? A. Steele and Otis. I didn't represent the Morris Building Company.

Q. Now refer to the letter dated November 17. A. "Jersey City, November 17, 1900.

J. C. PAYNE, ESQ.,

Dear Payne :—I return the grant. It is all right. I also enclose a copy of a proposed form of receipt for the $20.00 a foot to be deposited. You may want to show this to the members of the Board, [I think there is a mistake there, it says 'of signing the grant.' It should be 'on signing the grant']. Of course the grant is not to be delivered until the $13,544 consideration money is paid,

and in addition the $20.00 a foot to be deposited. Please preserve this form of receipt, as I want to use it later."

Q. You apparently then had sought the privilege of examining the grant before it was executed, and after examining it you returned it with this letter saying it was all right, and you also enclosed a copy of the proposed receipt; didn't you represent the New York Glucose Company in this? A. No, I represented the vendors of the upland. This purchase was dependent upon the grant coming from the State. The New Jersey Guaranty Title Company, Mr. Olendorf was the title officer of the New Jersey Guaranty Title Company, and they were passing title for Steele and Otis. Of course, I was doing anything I could to facilitate the passing of that title. Part of this grant, as I recollect, was sent, I think Mr. Payne entrusted it to me—it was taken to the New Jersey Guaranty Company; when the title passed and the consideration was paid to the State—of course they didn't want to pay for the grant until they got the deed for the upland. I was interested in the sale professionally of the upland, and anything I could do to facilitate that sale I did do, and I might say frankly and positively to you that I did not represent the Morris Building Company or receive any compensation from them or the New York Glucose Company or any of the parties you have named.

Q. I was not insinuating that there was anything crooked about your transaction. A. My compensation came from the vendors of the upland.

Q. My idea is to ascertain whether it was not a fact that the Morris Building Company was a mere ruse, that the real Hibernian in the wood pile was the New York Glucose Company, who already controlled the adjoining property, and they needed this to complete their plant, and when they got this the whole property was improved, and this ruse for $40.00 a foot for a great big manufacturing concern to go there was all nonsense. I don't impugn you, the record shows you didn't vote on it, but I want to know if that is not the fact? A. You stated it to me, and I believe it, but I know nothing about it. This firm of Steele and Otis, perhaps you know them, they are reputable counsel, they were exceedingly secretive as to whom they represented.

Q. If it is a fact, then the State was buncoed out of $20.00 per foot? A. I don't say that either, if you want me to answer that.

Q. I wish you would. A. That is from my private information, not as a member of the Riparian Commission. I understood their purchase of this upland there, on which they were going to build a large plant, was entirely dependent upon the grant from the State.

They would not take the upland without a grant from the State, and the condition was such, that when the grant was ready, it was was sent to the Title Company to be delivered with the rest of the title. They would not have paid for one without the other. Apparently, this was necessary to their enterprise. They would not go on with it without this.

Q. The plant they did build, was put on the other property as well as this? A. I assume they needed this or they would not have built their plant. I know they paid us a good price for the upland.

Q. They paid $20.00 less— A. For the upland. As to the question of the policy of inducing manufacturers to establish an enterprise on some rebating price, that is a proposition of another kind.

BY SENATOR MINTURN.

Q. Where did the Board get that power? A. They have the power to fix the price at what they think reasonable. I think anything of that kind was first done down on the Arthur Kill, either with the Liebig Manufacturing Company or the Canda Car Manufacturing Company, or some enterprise that was to be established there. Of course, I am not supporting it one way or the other. The argument is, that if any part of the land of the State is not in the market, and not developing, if any large enterprise is induced to come there and settle, it will bring others, and increase the adjoining land, and the State in the way of taxation and the employment of a large number of workmen would be benefited. Whether that is a good or bad policy is another question.

Q. There is nothing in the statute in regard to that? A. The way that was done, I suppose the Board had power to fix, in the case mentioned, $40.00 as the price; but the Board went a step beyond that; and the way it would be done, the grant would be delivered on the payment of $40.00 a foot; that money was turned over to the State Treasurer; the $20.00 per foot would be paid to the Board and deposited in the Trust Company under a form of receipt which provided that if, within a certain time, certain conditions had not been complied with, the money was to go to the state of New Jersey. If they were complied with, it was to go to the applicant. It was a sort of a deposit of good faith.

Q. If that land was worth $60.00, where was the power in the Board to subtract $20.00?

ATTORNEY-GENERAL McCARTER.—I don't see that they had the slightest right to do it. I can't understand it myself. Of course, Mr. Fisk didn't vote in this matter, and, therefore, is not bound to vindicate the act.

MR. FISK.—The Senator aked me, and I was trying to explain it.

SENATOR MINTURN.—I asked Mr. Fisk because he was the lawyer member of the Board.

MR. FISK.—I didn't assume to advise the Board on legal matters.

BY ATTORNEY-GENERAL McCARTER.

Q. Did you ever hear of the Water Front Improvement Company? A. Yes, sir.

Q. I show you the application that they made for a grant; do you remember that? I think that is another grant upon which you didn't vote? A. Yes, I couldn't vote on that.

Q. The application seems to have been filed in the name of the Water Company, Walter McDermott, president, who was the son of your partner at that time? A. I can explain that.

Q. That is another instance where you were interested and frankly said so, and didn't vote? A. I was interested in this way: We may as well get that straight, there was no Standard Oil in that. My firm were general counsel for the Commercial Trust Company of New Jersey. The Commercial Trust Company of New Jersey had loaned money to the Water Front Improvement Company on certain securities, and in order to secure the Trust Company on this loan, it was provided that a majority of the directors, including the president, should be named by the Trust Company. Mr. Walter McDermott, of our firm, was director and president, and Mr. Hardenberg, of the Trust Company was a director, and I was a director, and we remained such with the company until the loan was paid, and then we resigned, had no further interest in it.

Q. On page 151 of Book 7, there is a record of a meeting on May 5th, 1902. Present: Fisk, Cloke, Holt and Farrell, which seems to be the meeting in question. On page 163 of the Minute Book the following appears: "The application of the Water Front Improvement Company for riparian rights on the Hudson River at Edgewater was presented, and upon Commissioner Fisk's asking to be excused from acting in the matter, Commissioner Holt was appointed to take the chair. After consideration the application was granted, and the rate fixed at $75.00 per foot; do you remember that? A. I don't recall the rate or the application, nothing except that a grant was made.

Q. "After consideration the application was granted, and the rate fixed at $75.00 per foot?" A. Was there a grant made?

Q. Later on in the same Book 7, page 173, the following entry appears from the next meeting, meeting of May 28, 1902. Present, Governor Murphy, Commissioners Fisk, Cloke, Holt and Farrell.

The following appeared: "In the matter of the application of the Water Front Improvement Company, the applicant requested the Board to reconsider its former action in fixing the rate of $75.00 per foot, and on motion the request was granted and the rate fixed at $60.00 per foot." Do you recall that? A. No.

Q. Do you know what reason induced the board to change? A. No, these facts are brought back to my recollection because you read them. I had no interest in it whatever. It was a very common thing to have the applicant come back and ask for a reduction. That used to happen about every application.

Q. What was this Water Front Improvement Company? A. It was a company of which a gentleman named Martin was the principal owner. He owned some land out there, and he was the real owner of the land, and preferred to have it in this corporation. He made an issue of bonds on this land. He was engaged in the business of harbor improvement, dredging and pile driving, and had some contract with New York and he made some issue of bonds and covered this land, and he had secured a loan from the Trust Company, and we thought it was precautionary to control the board of directors at that time so that he could not get away with the money.

Q. What was done with this land? A. It was sold; it was subsequently sold to Mr. Harry and Will Pyle, of Pyle's Pearline. When that sale was made the Trust Company was paid off and that was the end of my connection with it.

Q. Did they build there? A. Yes, sir.

Q. It was bought for them? A. By the Water Front Improvement Company?

Q. Yes. A. No.

Q. Did the Water Front Improvement Company expect to use that property when they bought it? A. You are speaking about private business matters, but I can say to you I have no objection to it.

Q. I simply want to know if you can state whether the Water Front Improvement Company expected to use that? A. No, they held it for sale. We had other people trying to buy it; we were very glad when we found that the Pyle's Pearline people wanted to buy it, because it was on the sale of that land that the company's indebtedness was paid off.

Q. $60.00 per foot was a fair price? A. I suppose so; that is what the Board determined.

Q. And this man Martin? A. He was practically the owner of the company.

Q. H. A. Smyth Martin? A. Yes, sir.

Q. Who was he? A. His father was a lawyer in New York years ago, and I think this Mr. Martin was admitted to the bar first, and he afterward took up engineering and construction work. All my connection with them was in connection with this loan from the Trust Company.

Q. Now, turning for a moment to the Goetschius grant, I think you were present when the grant was given for $50.00? A. I can't tell you that, if you have seen the records and I was there, why, I was there.

Q. At a meeting of the Board held September 25, 1901, present Commissioners Fisk, Cloke, Holt and Farrell, also Governor Voorhees, the record shows, page 112 of the Minute Book, in the matter of the application of John M. Goetschius for a quit-claim deed, counsel of the Board reported— A. That recalls what you mean, if you don't care to go on, I heard that referred to in the last testimony.

Q. "On motion, the report was received and ordered filed and the consideration in the grant fixed at $50.00, counsel of the Board having reported, after examining the matter, and advising that grant be made." What led you to participate in fixing $50.00 as the consideration for the Goetschius grant? A. The report that was made to us by counsel that the State had no interest.

Q. Why didn't you suggest that the opinion of the Attorney-General be had on that subject? A. I don't remember now; furthermore, I don't know that I was in favor of $50.00 or $500.00. These matters don't appear on the record. There was a difference of opinion among the members as to what should be charged.

Q. You were a lawyer, you knew of the statute which provided that when a claimant under a legislative grant desired a paper to be recorded, he should give a rate fixed by the statute. Didn't it occur to you that it was curious that that statute in this case should be ignored, the facts fitting the situation almost exactly, and the grant made almost for nothing, and no opinion of the Attorney-General asked? A. No, sir; I don't think it did at the time. Since then, since this investigation, some matters came to my attention that I didn't know before.

Q. But that fact didn't occur to you? A. No, sir.

Q. Do you know anything about the Guffy Petroleum Company, or was that after you left? A. Where was that?

Q. That was down in Bayonne, near the Ingham and Jenkins branch. A. Was that the one Mr. Lindabury was interested in?

Q. Yes. A. I remember it.

Q. Don't you remember that Mr. Lindabury came on behalf of the Guffy Petroleum Company and desired a deed, and that the matter was then referred to the then Attorney-General? A. I presume it was if you say so.

Q. Would not that have been a natural thing to do when a legislative grantee comes to the Board and asks for a grant for nothing in violation of the statute, which says that in such a situation they shall pay $50.00 a foot, to take some legal advice other than the advice of the counsel of the Board alone upon that subject, when the counsel of the Board has already testified that the Attorney-General was frequently appealed to in matters of importance? A. The Attorney-General was, as I understood, and frequently counsel of the Board would say that he had taken his opinion and facts to the Attorney-General and submitted them to him. Many times he had no written opinion of the Attorney-General, but counsel said that he consulted with the Attorney-General.

Q. In this case it is not pretended by the counsel of the Board that he did consult with the Attorney-General? A. That I don't know.

Q. And I want to know whether it didn't occur to you to get the best legal advice? A. I don't recall what was in my mind at that time; the application was made at Sea Girt, and Governor Voorhees was present, and there reference was made to counsel, and whether I was present at this meeting and voted for it I can't tell you. The facts were not brought to my attention so that I recall them now. All I recall is what I heard at the last session.

Q. Is it not true thas so far as you now recall, you relied implicitly upon Mr. Record, the report of Mr. Record that it was all right, and that this should be given for a nominal consideration? A. Undoubtedly it may seem that I have a bad memory, but there are a great many details to this business, ten or twelve years ago, and I can't recall them.

Q. Did you see Mr. Record's opinion, do you remember, at the time? A. I have seen it since.

Q. Did he read it the time when he made his report? A. I could not tell you that.

Q. Do you recall that he says in the course of that opinion: "I am therefore, of the opinion that the act of the Legislature hereinabove referred to, and the action of the Annett heirs and assigns in maintaining the wharves referred to, constitute a grant of an interest or estate in this land under water, which has not and cannot be repealed by the Legislature, and that Goetchius, as the assignee of the rights of Annett, could prevent any grantees of the Riparian

Commission from improving in any way the lands under water in front of the upland in question. Under these circumstances, the rights of the State, if any, in the lands under water are practically without value. In one or two instances, under somewhat similar circumstances, as for example in the Donahue grant, it has been the practice of the Board to make a grant for a nominal consideration, and I am of the opinion that such a course should be followed in this instance." Do you recall that that opinion was read to you and your associates at that time as a vindication of the right to give this land away for nothing ? A. I can't recall that. I saw this opinion the other day in Jersey City ; as to what I remember back of that it is very hard for me to distinguish.

Q. Then, what I understand you to say is, that although you are a lawyer, and although you knew of the statute— A. I didn't think that statute applied here.

Q. You didn't think it did ? A. No, sir.

Q. Why not ? A. It didn't seem to me that it did. I don't want to enter into any legal discussion.

Q. I would like to have you tell me and the Committee your opinion. A. It is nearly train time, and I will write you a letter if you wish.

Q. I will have to ask you to come back, and one of the things that I will ask you to do is to tell why that statute don't apply.

The further hearing was then adjourned until Friday, the 21st day of September, 1906, at ten-thirty a. m.

SENATE CHAMBER, STATE HOUSE.

Trenton, N. J., September 21, 1906.

Meeting of Special Committee of the New Jersey Legislature to investigate the granting of Riparian Lands by the State, etc.

PRESENT.

SENATORS WAKELEE (Chairman), AVIS and MINTURN.

ASSEMBLYMEN BARBER, JONES and CROWTHER.

ATTORNEY-GENERAL MCCARTER and ASSISTANT ATTORNEY-GENERAL DUFFIELD.

WILLIARD C. FISK, recalled. Examination resumed by Attorney-general McCarter.

Q. Mr. Fisk is in the chair, and we will, with the permission of the Committee, continue his examination. At the last hearing, just at the close, as I recall it, we were referring to the so-called Goetschius grant, which was made while you were a member of the Commission for $50.00, of what seems to me to have been a most valuable right; and it appears from your testimony, the minutes of which I read, that you made and acquiesced in that grant being made through the advice of the chief counsel of the Board, Mr. Record, that it should be made for a nominal consideration. I asked you a moment before the adjournment, if it hadn't occurred to you as a lawyer, whether or not that section, Section 4 of the supplement approved March 31, 1869, which provides that "In case any person or corporation, who, by any legislative act, is a grantee or licensee, or has such power or authority, or any of his, her or their representatives or assigns, shall desire a paper capable of being acknowledged and recorded, made by and in the name of the State of New Jersey, conveying the land in the provision to the third section mentioned, whether under water now or not," authorizing the Commission to make and give a paper of that character upon the payment of $3.00 per foot rent, or $50.00 a foot for each and every lineal foot, and you told me as I remember it, that you had reasons for thinking that act didn't apply? A. Yes, sir.

Q. Will you kindly state now what those reasons are? A. As I understood it, Attorney-General, the 4th section of the act of 1869 was passed with special reference to the Harsimus Cove property in Jersey City, known as the Budd grant. That has always been my understanding, that that was the occasion of that particular legislation. It was a special act with reference to riparian matters, and you will permit me to remark, that in my judgment the several acts relating to riparian matters are very confusing, and in some instances contradictory, and it seems to me removes the obligation to only make grants to legislative grantees under that section. In 1871 that section was amended, or a supplement was passed, in which the price to be charged is omitted. Again, subsequent to the act of 1869 a law was passed, requiring the Commission in all cases to make a grant in fee, they to fix the sum, or, on a lease convertible, into a fee, upon the payment of a rental, equal to seven per cent. upon the principal sum of the lease. This act, the fourth section of the act of 1869, is contradictory to that. The $3.00 per foot rental provided for in the section is not seven per cent. but six per cent. upon the $50.00 a foot front that is to be charged. It should be $3.50 if it was to be at seven per cent. Again, further legislation provides that the Riparian Commission in all cases might make any grant or lease upon any terms that they saw fit, without any restriction as to price. That left them quite free to make any contract in regard to a grant that in their judgment they should deem proper. For those reasons, it has seemed to me that the fourth section of the act of 1869 was superseded, and of course, there are practical reasons to assume that it did not apply, from the fact that in many parts of the State, where there have been legislative grants, the land is not today and never has been, and, as far as human foresight can see, never will be worth $50.00 per front foot. I doubt whether the location of the Goetchius grant, which I believe is some distance north of the Fort Lee ferry, has ever been worth $50.00 per foot front.

Q. Is it not a fact, however, notwithstanding the opinion which you just expressed, that during your term a grant was made under this 4th section to the Hoboken Land and Improvement Company, under the assumption that the 4th section was still in existence? A. I don't recollect; there may have been. I don't recall it.

Q. Without meaning to be in the slightest degree offensive, for I look upon you not only as a brother lawyer but as a friend, I want to direct your attention to this fact, that you were for twelve years a member of this Commission. You received annually a salary of $1,500; you were a lawyer of the highest standing in the State, a

man of very great intelligence; you were Vice Chairman of this Board most, if not all of this time, and yet there is hardly a transaction to which I refer you that you can remember a thing about. Do you mean to say that in two years that have elapsed, the whole scope of the work during your term has escaped your mind? A. I think I remember very distinctly most all of the business of the Board. I only beg to remind you that I have a failing which is constitutional; it is utterly impossible for me to identify a thing by name, I can't do it, I never have been able to do it, and it is a misfortune that I labor under. I can't recall the names of my own clients. I had to refer to the Chairman of the Board to assist me in that particular.

Q. You have no recollection that not long since, after the passage of the act which you have referred to as constituting an implied repealer of the 4th section of the act of 1869, a grant was made under the 4th section and concurred in by you to the Hoboken Land and Improvement Company, which claimed under legislative grant? A. It may be so, if you will refer me to the papers I can tell you in an instant; but when you refer to a grant by name I find it difficult to locate it. If it was, it was in the Harsimus Cove, where it was understood this section applied.

Q. There was nothing in the 4th section to apply to the Harsimus Cove particularly? A. No, that was the understanding.

Q. You don't wish to go on record as a lawyer, saying that an act which is general in its purport, will be limited in its effect to some locality which was interested in its enactment? A. No.

SENATOR MINTURN.—Where is it located?

MR. McCARTER.—I understand this grant under Section 4 was in the city of Hoboken, made to the Hoboken Land and Improvement Company in Harsimus Cove.

SENATOR MINTURN.—Will Mr. Payne turn to that some time during the day so that I can look at it?

MR. FISK.—I would like to see it.

MR. McCARTER.—If we have it here we will show it.

Q. There is not a word in any of the subsequent acts to which you refer, expressly repealing the fourth section of the act of 1869, is there? A. I think not; each one is a supplement to the fourth section of the Act of 1869.

Q. And all of these subsequent acts simply state that the Riparian Commission may do this and may do that, and fail in every instance to refer to the peculiar instances where the situation is that the applicant claims under a legislative grant, and wants something else? A. I think the Act of 1871 specifically refers to this section,

with a preamble and recital, and a re-enactment of the section.

Q. Please refer to that. A. If I can do so. It is the act passed April 6, 1871. It is one of the few acts that are not supplementary or amendatory of the original act. It is an act in reference to the Riparian Commission.

Q. What is there in that act that you think in any way repeals or overcomes the effect of Section 4? A. This act recites that applications under Section 4 and under a certain joint resolution of the Legislature, are frequently made, and it has been found by experience that grants and leases containing the grants and covenants authorized by that section, by this joint resolution, are more readily accepted and more satisfactory than those which do not contain the same; that the said Commissioners, with the concurrence of the Governor and Attorney-General in all cases of application for grants or leases of lands now or at the time of the application, or at the time of the lease or grant, under tide-water; and in all cases of applications for grants or leases of land which are not now, or shall not at the time of the application or at the time of the lease or grant be under tide-water, and in all cases of applications for leases or grants for all or any of such lands may, notwithstanding the first proviso in the fourth section of said supplement, or any other clause or matter in said supplement contained, grant or lease, or lease first with a covenant to grant, and grant afterwards for such principal sum that the interest thereof at seven per centum will produce the rental, &c.

Q. That certainly does not authorize a grant for nothing; it increases the rental, if anything? A. It does not fix $50.00 per foot.

Q. But it fixes a seven per cent. rental? A. Yes, sir; that is what I called your attention to, but that Fourth section was inconsistent with subsequent enactments, that was a six per cent. rental.

Q. Didn't it occur to you that when it was proposed to make such a valuable grant as the Goetschius grant for nothing, that it would be well to take advice as to whether the Fourth section was still in operation? A. We did, sir, as I understood it; the matter was referred to the counsel of the Board, and his opinion is filed and the Board acted upon it. I want to say, Mr. Attorney-General, that I am not clear that I voted for that. I am speaking generally of what the Board did. You address all your questions as if I had affirmatively acted in that case. I don't know that I did.

Q. You remember the Goetschius application? A. Only briefly, and such information as I have about it has been recalled by what I have heard brought out by this Commission.

Q. You know that it takes three out of four of the Commissioners

in order to get any grant? A. No, I do not; it takes three out of five.

Q. The Governor didn't often attend by any means? A. The Governor was present when this matter was presented, Governor Voorhees.

Q. Will you be kind enough to answer the question; do you mean to say that Voorhees was present when it was authorized? A. He was when it was presented.

Q. Was he present when it was authorized? It is very manifest that you persist in not answering my question. I desire to be courteous. Please answer my question. Was Governer Voorhees present the day the Goetchius grant was authorized? A. I can't tell you without reference to the minutes. I know he was present when it was presented, but that he was present when it was finally acted upon, I don't know.

Q. It also appears that the application was presented at Sea Girt? A. Yes, sir, that is the reason I know he was present.

Q. It also appears in your testimony, that on that day it was referred to the counsel? A. I don't think I have been asked about that.

Q. It also appears that at another meeting in Jersey City, held subsequently, at which you were present, the counsel made a report and that the Governor was not present when the report was made? A. I think you are in error. You haven't inquired anything about that of me before this moment. That is somebody else's testimony, if I recall it correctly. I may be mistaken but that is the way I understand it.

Q. On page 574 of the minutes, the following appears: "I don't recall what was in my mind at that time, the application was made at Sea Girt and Governor Voorhees was present, and there reference was made to counsel and whether I was present at that meeting and voted for it I can't tell you. The facts were not brought to my attention so that I recall them now. All I recall is what I heard at the last session." A. I beg your pardon, I was mistaken. I didn't recall that at the last session you asked me anything about that.

Q. Without taking further time to refer to the record, I will refer you to the minutes themselves. The minutes of the meeting held September 28, 1901, present, Commissioners Fisk, Cloke, Holt and Farrell; absent, Governor Voorhees. That is the meeting at which the record shows that upon the report of the counsel that grant was taken up and ordered? A. That is no doubt correct.

Q The record further shows, as already appears in the minutes,

that upon the report of counsel and the advice of counsel the grant was ordered made at that meeting for a nominal consideration. Now, I want to know whether you have any recollection about what attitude you as vice-chairman of the Board, took upon that important matter, or, do you wish this Committee and the State to understand that the thing was of not enough importance to have you remember anything about it? A. Well, I will have to state it, and the Commission and the State will have to think what they please. I can only give my best recollection. I can't recall whether I voted for that price or not. I undoubtedly signed the grant and it was passed on at the time, but if there was any difference of opinion as to the price to be paid, it was only whether it should be $50.00 or $500.00 or $200.00. It was not considered at all as to whether they should charge a substantial sum. I don't think that was considered by the Board at all under the report of counsel.

Q. You can't remember anything about it? A. I do remember about it, that the question of charging what you would call an adequate consideration for the grant was not considered by the Board. Under the report of counsel it was the intention of the Board to make a grant at a nominal consideration; whether it should be $50.00 or $200.00, or some such sum as that I can't now remember.

Q. Now, passing from that— A. May I say a word in relation to that before you pass from it?

Q. Surely. A. I want to call the Attorney-General's attention, and the Committee's attention to something in connection. with that grant which has come to my notice since this investigation started, and which I can't understand and would like to have looked into and explained. At the time when applications are presented to the Commission, they go to the secretary and engineer, who was the custodian of the records and of the maps, and it becomes his duty, and upon him the Commission relies for that information; to lay before the Commission all the information in the office relating to the particular locality or application under consideration. It now transpires, to my surprise, before this Committee, that in addition to the legislative grant of 1844, which was the only thing that was brought to the attention of the Board and the Governor at the time they considered this matter, there was a lease of all or part of this property made in 1874. That matter was not—I only understand that to be so from the information now given to this Committee. Now, if that is true, why that was not brought to the attention of the Board at the time, I don't understand. It certainly was not brought to my attention, and as far as

I have been able to inquire, to the attention of the other members of the Board who were present at the time ; it was not brought to their attention. If it was overlooked by the secretary and afterwards discovered, when he discovered it he didn't bring it to the attention of the Board. Why that is so is a situation that I am utterly unable to comprehend.

Q. That will be investigated ; but perhaps you may go a little further, and tell me if you have taken the pains to inquire and bring to the attention of this Committee the further fact that the counsel, Mr. Record, whose recommendation was that you should give this grant for nothing, had only a few years before filed with the Chancellor a brief, which I hold in my hand, on behalf of one of the defendants in the very suit which was being prosecuted for rent on that property, didn't bring to the attention of the Commission the fact that there was a lease on this property? A. Don't address that to me ; you will have to address that to the counsel of the Board. The fact that that lease was not brought to the attention of the Board by the man who was paid $3,500 a year, by the man whose duty it was to do that, I don't understand.

Q. In the Hoboken Observer you undertook to defend the former counsel of the State Board, and I suppose as part of that defence you are now trying to bring to the attention of this Committee an alleged dereliction of duty on the part of the secretary ; why don't you bring to the attention of the Committee this most flagrant fact, that the very man who had written the opinion on which you were to make the grant for $50.00 for this property, had before that on behalf of one of the defendants filed a brief with the Chancellor in a suit involving the collection of the rent. Why didn't you bring that to the attention of the Commission? A. I beg to say now, as I said the other day, that I made no defence of the counsel of the Board in the Hoboken Observer or any other newspaper. If any facts that are in my knowledge, which I can either state to the press or to this Committee, or to you, constitute a defence of anybody, I will gladly state them. I am not here to defend anybody, not even myself. So far as the question you now ask me is concerned, I have nothing to say, I don't know anything about the brief. I never heard of it except as I have read it in this testimony.

Q. If Mr. Record had brought to your attention the fact that there was then pending before Chancellor McGill an application on his part to dismiss the information filed by John P. Stockton, then the Attorney-General, against the Annett heirs, which information was designed to collect the rents due the State on a lease upon this very property, would you have voted for the grant? A. Decidedly not.

SENATOR MINTURN :—How long before the grant was made was that brief filed ?

MR. McCARTER.—I don't know the filing date. I will state that the copy of the information and the brief which I now hand you, were obtained by one of my clerks from the effects of the late John P. Stockton, Attorney-General, at Jersey City. When his term expired all his papers were taken to Jersey City, where, as you know, he opened an office, and he subsequently died. His son has his effects, and these papers I hand you are the information by John P. Stockton, wherein he sought to recover possession of this very property because of the failure of the Annett heirs to pay rent. There is also a motion by George L. Record, attorney for some of the Annett heirs, to dismiss the information for want of equity, which application he testified before the Committee was never decided by Chancellor McGill.

SENATOR MINTURN.—This brief was filed in support of that motion ?

THE WITNESS.—Mr. Attorney-General, before we go further, may I say a word to you ?

Q. Just one moment. Do you know whether any map was shown to the Commissioners at the time this application was presented and under consideration ? A. I could not remember that, but that was the custom. We had in the office a sort of an index, a series of maps covering all the riparian lands of the State, and on these were presumed to be entered all the grants ; it was a sort of an index. I can't remember this specific case, but that was almost the universal custom.

Q. You can't say by referring to the map which I show you, which I concede is not the original map that you have just been referring to, but see whether or not it is a copy of a map that was presented at that time, and which appears on its face, so far as this Goetschius grant is concerned at Fort Lee, the following : "Lease to heirs of Robert Annett, April 18, 1874." "Lease to heirs of Robert Annett, first tract, April 18, 1874, grant to John M. Goetschius, September 25, 1901." A. I could not tell about that ; I want to distinctly state that at this time this matter was before the Riparian Commission, it certainly was not brought to their attention by the secretary or counsel, or anyone else, that there was any such lease made in 1874. I only want further to remark that the duty of bringing that to the attention of the Board lay with the secretary. It was his usual duty for which he was paid.

BY SENATOR MINTURN.

Q. Do you know how much was due on that lease at that time ?

A. I don't know anything about it except what I heard before this Committee.

SENATOR MINTURN.—Mr. Attorney-General, do you know how much rent was due on this lease at this time?

MR. McCARTER.—My recollection is, Senator Minturn, that it was in the neighborhood of $40.00.

A. As to the effect of this paper giving confirmation to a legislative license is a question I don't know anything about. That is something the Attorney-General would have to consider, but I want to add, if you will permit me to do so, that I am not here to defend anybody or accuse anybody. I don't know whether Mr. Record needs any defence or not, that is up to him. I don't know whether Mr. Payne needs any, that is up to him, but if the facts within my knowledge accuse or defend anybody, I can't help it.

MR. McCARTER.—I will state to the Committee that it has been suggested both by Mr. Record and Mr. Fisk that this subject be investigated. That since the meeting at Jersey City, at which Mr. Record testified, the Board of Riparian Commissioners has made and passed a resolution requesting, if not directing, the Attorney-General to commence a suit to upset the Goetschius grant, and I am expecting at the earliest practical moment, I have to do that, and have this whole thing investigated, what was done and what was left undone at the time that grant to Mr. Goetschius was made. There will be no mistake about that being done.

SENATOR MINTURN.—Investigate through this Committee?

MR. McCARTER.—No, by information and suit at law.

A. That will be a suit to set aside the grant. What I want to find out is, why this information which was in possession of the paid employee of the Board was not given to the Commission, and was not brought to the attention of anybody until this Committee sat.

BY MR. McCARTER.

Q. My recollection is, that you were in Jersey City that very hot day when I struggled for half an hour to find that out from Mr. Record, without any success? A. I only say to you that that was Mr. Payne's duty.

Q. I am not behind Record or Payne or anybody else, but as long as we are on this question—under the law, whose duty was it to examine the title? A. It was not anybody's duty to examine the title, never was.

Q. Didn't the Board pass a resolution in so many words, that they would make a grant upon the certificate of counsel that the title was as presented; was there not just such a resolution passed while you were a member? A. The counsel of the Board didn't examine

titles, they examined the abstracts of title which were submitted to them for consideration. I never understood that they examined the record—it was certified to by reputable counsel.

Q. I want to call your attention to a provision in the minutes, Minute Book No. 5, page 249. I read from the meeting of September 27, 1904 : "Present : Commissioners Fisk, Ross, Holt and Cloke ; absent, Governor Werts."

"On motion, it is resolved that hereafter the certificate of the general counsel—[that being Mr. Record, he having been appointed the year before]—that he had examined the abstract furnished by the applicant for riparian rights, be accepted by the Board as satisfactory evidence of said applicant's title." Do you recall that? A. That was my statement.

Q. Do you recall that? Q. I have no doubt that is correct.

Q. Is it your judgment that the counsel was to make an examination of the title, or the secretary? A. The counsel was not—we are, perhaps, speaking technically and misunderstand one another. The counsel was not to examine the title, he was to examine the abstract of title submitted by reputable counsel. He was not to examine the record, and you say the title.

Q. I didn't suppose there would be a misunderstanding over the term. Examining the title means to examine the abstract. A. Ordinarily it means to examine the record.

Q. All right ; was it the counsel's duty to examine title or was it the secretary's duty? A. It was the counsel's duty to examine the abstract of title where the application was based upon the ownership of the adjacent shore. In the case of the Goetchius grant, there was no necessity for an examination of title because it was confirmatory of a legislative grant. It was the secretary's duty to inform the Board in cases of applications of all previous action which had been taken by the Riparian Commission in respect of that particular property. He was custodian of the records, and as engineer custodian of the maps.

Q. Do you think it was not the counsel's duty, if he was possessed of information that there was a lease outstanding with large arrearges of rent, and of a suit pending in which he was resisting the collection of rents, to bring that back to the attention of the Commission? A. It undoubtedly was, but I understand Mr. Record to say at the examination that he didn't know the fact. If he did know it, it was undoubtedly his duty to state it to the Board.

Q. Is it not the universal practice of the secretary at the time a grant is made, to present a map of the property? A. I have already stated it was the custom.

Q. Will you say that the map that was shown at that time, didn't expressly show on its very face the fact that these leases were outstanding? A. I don't know whether it did or not, if it did, the attention of the Board was not directed to it.

Q. Were the Board blind? A. The map was shown to the Board in every instance simply for the purpose of locating the property.

Q. Were they blind, could they read; you could read and the other members could? A. I can—

Q. If you had looked you could not help seeing the words, "Lease to the heirs of Robert Annett, April 18, 1874," if you looked at it? A. I will let you judge about that.

Q. How otherwise, how more satisfactorily or better could he bring to the attention of the Board the fact that there was a lease outstanding against that property, than by having it on the map which he showed to you describing the very property in question? A. Now, Mr. Attorney-General, it seems to me you feel it your duty to defend Mr. Payne. I don't think it is. I am trying to say that it was the duty of the secretary and engineer in all instances to collect all data from the record with reference to any location where an application was made, and lay it before the Board. I don't mean lay it on the table; I mean bring the Board's attention to it, and that in this particular instance my attention was not brought to the fact that a previous lease had been made, and I have spoken to two other Commissioners since this examination, and they told me they had never heard of it.

Q. Do you think that is evidence? A. No, sir; it is not.

Q. The only thing you can remember about this whole thing is, that Record gave an opinion and Payne didn't do something; you can't remember whether you voted for the price, or what price was fixed, but you do remember that Payne didn't speak of that old lease? A. I beg your pardon, but I think my examination scarcely justified your question.

Q. What else do you remember? A. I don't think it's quite fair, that you should say to me, that "you care to remember anything."

Q. I didn't say that you cared to remember anything. A. I beg your pardon; that is the way you prefaced your question.

Q. If I said it; I am sorry; I didn't mean to say so, and I don't think I did. A. Very well, sir; we will let that pass.

Q. I ask you what you can remember in connection with that Goetschius grant, except the fact that Record gave an opinion, that Governor Voorhees was present, of course, when it was applied for; down at Sea Girt, and that whether you voted for it or not you

can't say. What can you remember about it? A. I didn't remember about this, that the secretary had omitted to perform his duty, until it was testified to before the Commission; I didn't recall that; I didn't know anything about it.

Q. What can you recall in reference to this famous Goetschius grant? A. I remember there was such an application. I remember that Mr. R. O. Babbitt was the attorney who appeared for the applicant. I remember, because I have looked at the minutes, and not for any other reason, that the application was first presented at that meeting held at Sea Girt, and I remember that there was an opinion of counsel that the rights of the applicant were complete under the legislative grant, and that the value of the State's rights was nominal.

BY SENATOR AVIS.

Q. Are you in a position to say now, that your memory satisfied you that Mr. Payne did not call the Board's attention to this? A. I am satisfied that my attention was never called to it, and that the attention of the Board was not called to it, because if it had been, I would not have voted for, or signed any such paper as that, and I am quite sure the other members of the Board would not either. It is not dealt with in counsel's opinion, it is not mentioned Why it was not mentioned, I am unable to explain.

BY SENATOR WAKELEE.

Q. Was Mr. Fisk a member of the Board in 1891 when the Attorney-General filed this information? A. I think I became a member in about 1889. Mr. Record was not counsel of the Board at that time.

Q. Do you know anything about the information? A. No, the collection of the back rental was not in the charge of the Riparian Commission; it was in charge of the State Treasurer and the Attorney-General. No report was made to the Riparian Commission by the State officers where there was any arrears of rentals. After a lease was signed and executed, it was delivered to the State Treasurer, and it became his duty to collect the rents.

BY MR. McCARTER.

Q. Before taking up the next general topic, I want to ask you a question which you need not answer unless you want to, because I realize it is asking you to testify concerning some professional relations. It appears that you as attorney for the Edgewater and Fort Lee Company, since your leaving the Board, are applying to the Board for a renewal of their license. It is my desire to present to this Committee everything I can concerning the original Edgewater and Fort Lee grant, and to that end I had proposed to sub-

pœna before the Board all the directors and officers of that company for the purpose of finding out exactly what was paid. A. Paid for what?

Q. For that grant, directly and indirectly. I have had an investigation made in the office of the Secretary of State and elsewhere for the purpose of finding out who the officers were, and there is no certificate there as the law requires. Do you object—I don't mean to be disagreeable—or do you feel at liberty to tell us who these officers are, so that, I tell you frankly, I may subpœna them? A. My connection with this railroad, which I understand is a subsidiary road of the Erie, was purely confined to two employments, one to secure a renewal of the license that expired some two years ago, and the other to secure a renewal of the license that expired last spring.

Q. After you left the Board? A. Yes, sir; I had no connection with the State in any official capacity.

Q. I understand that. A. And my communications in regard to the matter were entirely and exclusively with Mr. Brownell, the general counsel of the Erie railroad, and I don't know who organized the road or who the directors are or anything about it. Those are the only two employments of any kind I have had in the matter. Messrs. Collins and Corbin are the general counsel of this railroad in New Jersey, I am not.

Q. I want to ask you if, during the interim, anything has occurred to you or been recalled by you that will explain in any other way than you have already explained the discrepancies in the prices which I called to your attention last week, charged by the Board in the following grants:

April, 1893, Susquehanna Railroad at Shady Side, $53.25 per foot.

1893, May, one month later, Cord Meyer, just above, $50.00 per foot.

January, 1895, Charles McKenna, Pleasant Valley, $43.34 per foot.

January 18, 1895, Hinner grant, Pleasant Valley, just in that locality, $50.00 per foot.

May, 1896, Ellis and Company, just north of the Susquehanna and Western, $87.00 per foot.

November 18, 1899, Ellis and Leonard, $60.00 per foot.

November, 1900, the Morris Building Company, $60.00 per foot, with 20 off for the purpose brought out at the last meeting.

July, 1902, the Water Front Improvement Company, four-fifths of a mile south of Ellis and Leonard, $60.00 per foot? A. As to that I have had no information since the last session, but I would

be glad to give my views as to that more extensively if you desire me to do so.

Q. I wish you would. A. I have thought the matter over, and as to three or four of those grants, you will recall I was excused from voting or was not present. I was not present when the Cord Meyer grant was passed, and the Morris Building Company I didn't vote on, or the Water Front Improvement Company, being excused ; but I know the general policy of the Board and the general location, and I know the general questions of price, and I want to say to the Commission in the first place, that comparing prices— I think you asked me about another one in 1887 to McKenna of $30.00 per foot at the Edgewater ferry. I want to say that the prices of land on the Hudson river five years ago, ten years ago, fifteen years ago or twenty years ago, are not to be compared. The locality twenty years ago, fifteen years ago, particularly below Edgewater ferry, as Senator Wakelee undoubtedly will recolect, was absolutely devoid of any commercial development. There had been none at that time, and the shore land there had been used for private residences. It is only in recent years that there had been any movement for commercial development in that section, and ten or fifteen years ago the land south of the Edgewater ferry —as is the land now from Edgewater ferry north to the state line, so far as commercial development is concerned—was in the same state as it was when Heindrick Hudson first sailed up the river.

Again, you can't compare prices by saying that a grant 100 feet wide was given to one man for $40.00 on the Hudson River, and another grant of 100 feet wide to another man at $60.00, the $40.00 and $60.00 being measured per foot front on the exterior line for solid filling. The reason you can't compare these prices is this, that the exterior line for solid filling as the Committee can see from an inspection of the map, does not follow the conformation of the shore. At some points it is much nearer the shore than at others. Therefore, and by reason of the peculiar formation of the land because of the Palisades, and the strip of upland between high water mark and the Palisades, in part the location being quite abrupt, the greater amount included within the line of the grant—subject to certain conditions—the greater the value of the grant. Therefore, where a grant of 100 feet there at $40.00 is given for example, for a strip that runs out from high water mark 200 feet, and another grant is given for 100 feet front, for a strip that runs out 300 feet or 400 feet, the 300 feet or 400 feet strip is much more valuable than the 200 feet strip—if I make myself clear. The line for solid filling does not follow the shore, and at one point an appli-

cant will obtain for his money much more land for the same frontage, which he can fill in and employ for commerical purposes, than he will obtain at another point.

Again, on that shore is a river road, a well established, long established road. That road at Edgewater and for some distance north and south of it, runs practically along the shore line, so that between the road and high water mark, there is a very small amount of upland, some places not over ten or fifteen feet. Further down, and further south, that river road goes back from the shore leaving quite a large space of upland and meadow land between the road and the shore. Where this road adjoins the shore, and there is no upland, but a few feet between high water mark, the land is much less valuable, the land under water, than where the road goes back from the shore, and there is a large amount of upland that can be used in connection with the land under water. This road cuts off the upland from the water front in such a way that a manufacturing industry desiring to establish there, cannot build its factories back of the road and use the water front, because it cannot cross the road with its buildings or with its structures and obtain access to the land under water, except by the ordinary crossing.

Again, in some of these caaes it is quite impossible to compare the prices without being familiar with the peculiar conditions and circumstances of each case. At some places on that shore the expense for filling the land is very much greater than others, due to the depth of the mud, and the distance the pilings and crib work has to go down before any solid foundation can be obtained. In such locations where the expense of filling is very much greater than others, of course the land is not as valuable for commerical purposes, as where that expense is not so great.

These are a few of the reasons which modify the price of grants in different locations, within even two or three miles of each other, and it is quite impossible to make a comparison of prices simply by saying that a certain grant was so much per foot, and that another was another price. The Attorney-General has a map here that would show what I am trying to point out, perhaps better than I can explain, if I may be permitted to do so. This map does not go quite as far south as I thought. This is the present land of the Edgewater and Fort Lee ferry, which runs from 135th street. When these first grants were made, to which the Attorney-General has referred, there was no ferry there; there was no communication whatever except by the old ferry that used to run from above there. At that time this entire shore was for residence purpose, and had been for many years. The development of this point commenced from

the south and gradually worked up. When the ferry went to its present location, it increased the valuation in that vicinity very much. I have before me now case of a plot of land at that point that sold six years ago for $3,500. It sold one year ago for $10,000, and the man is now offered $17,000, showing the remarkable increase in value in the last five years. This road that I speak of is here known as the River road. That road for a considerable distance practically runs along the high water mark, the distance between the road and the land under water being very small, in some cases not over five or six feet. That road absolutely prevents the development and use of this land in connection with the upland, and, therefore reduces the value of the grant here. When you get down here to the River road, this road goes inland and this land is very level ; this is very abrupt. Down here there is meadow land, and a large tract which can be used in connection with the water front land to advantage, and it is here that these large enterprises like the Glucose Company and the Pyle's Pearline people located, because they can buy this upland and use it as one piece.

Again, it will be observed, that this is a straight line and does not follow the shore, so when you speak of a grant—this is the pier line and the line for solid filling. The line for solid filling is a valuable line because it limits the extent to which made land can be made. At this point the line of solid filling is close to the shore. You can see at once that $40.00 a foot there, and any other price, is no comparison, for the reason of the amount of additional land that goes with the grant. That varies all along the river.

Q. Right in that connection, the land along the point where I am indicating with my finger is less valuable; there is less in front to fill in, and it has a road running on behind, so apparently that is very shallow; whereas, further down— A. It becomes more valuable further south.

Q. It does become more valuable ? A. Yes, sir.

Q. How then, do you account for the fact that in 1903, the Board, during your attendance, charged $60.00 of John Eisele for this grant which I now indicate, No. 21, and in 1900 only charged $60.00 with 20 off for improvements, for the Morris Building Company, for so much more valuable property ? A. That Morris Improvement Company grant you will have to ask the members of the Board about that ; they acted on it, I didn't.

Q. I am not asking anything of you ; you were a member of the Board at the time ; can you give any explanation of the fact, that while you didn't vote for it, the Board, with your acquiescence— A. I beg your pardon.

Q. The Board, with your acquiescence, made a grant to the Morris Building Company at the time indicated, for that very much more valuable property at nearly the same price that they charged Eisele for this little tract above? A. I don't know the reasons that fixed the price for the Eisele grant, or the Morris Building Company.

Q. We will take the Ellis and Leonard. A. Or the Leonard grant, or any other.

BY SENATOR WAKELEE.

Q. May I ask a question—you gave reasons why values had varied; from an examination of the map is there any reason why that difference should exist? A. I can't tell now without examining the records of the Board what the special features were in what is known as the Eisele grant or the Morris Building Company grant. I can't tell that. I know at certain of those places they find the depth of mud very great, and the expense of filling is greater at one place than at the other.

BY MR. McCARTER.

Q. I really look upon you as quite an expert upon this subject; you were twelve years on the Board, and are a very intelligent man. A. I don't know about that.

Q. And while we are very glad to have your general disquisition upon this matter, you haven't yet answered my question, namely, how do you account for the great discrepancy in these prices charged by the Board? A. I don't think there are any discrepancies.

Q. Don't you think there is a discrepancy in the John Eisele and the Morris Building Company's grant? A. I can't tell about the fact of the Eisele grant. I don't remember the physical conditions or what the facts were then, I am sorry to say.

Q. You can't remember anything about it except as the map shows? A. That is all I remember now.

Q. Look at the map; there is an apparent discrepancy? A. There would appear to be so.

Q. And in several other cases as well? A. I don't know about that.

Q. How about the Ellis and Leonard grant; that has very much deeper solid filling line, and Ellis and Leonard have a very much deeper tract for solid filling, and I think it has more upland before you come to the right of way, two or three times as much? A. Neither of them have very much.

Q. Two or three times as much. A. What were the prices on those?

Q. I will give it to you; Ellis and Leonard $60.00, and John

Eisele's was $60.00. A. What was the difference in the date?

Q. Ellis and Leonard are 1899, and John Eisele is 1903, four years ago. A. That would be about the right proportion then.

Q. Then you think the difference in time accounts for that? A. Yes, if this was the first one sold, as it appears to have been, five years before that. My judgment now, looking at this map, without having before me the information that was presented to me when I acted upon the matter, would indicate that the land in the Ellis grant was more valuable than the land in the Eisele grant. The Attorney-General tells me that one was made five years after the other, which would seem to indicate the reason for the increase in the price.

Q. Now take the Water Front Improvement Company, which is No. 4, which you say is greater and further from the highway than any we have mentioned yet, and only one year in advance of the Eisele grant of 1903. That was at $60.00. In other words, exactly the same price as the Eisele grant. How do you account for that? A. I don't account for it. I didn't act on that.

Q. You were a member of tho Board? A. I could not act on it; I explained that.

Q. You were a member of the Board? A. I was.

Q. Can you give any enlightenment as to what your theory of that grant was? A. I could not, I didn't take any part in the discussion on that grant, nor did I vote on it.

Q. Do I understand the force and effect of your testimony to be, that the more the acreage, the more valuable the grant? A. Not always in riparian land, but I think it is very often true on the Hudson river. There are other sections of the State where just the reverse is true.

Q. What is the character of the Camden front between Cooper's Point and Fisher's Point; what is the width of the channel, about 800 feet? A. I could not tell you that.

Q. It is a very broad channel? A. I don't remember Cooper's Point.

Q. Do you remember anything about any grants that were made during your term down on the Delaware river near Camden? A. Yes, sir.

Q. You know, do you not, that Camden is right opposite Philadelphia, that the river is very deep at that point, the channel is some 800 feet in width, and that large industries are built there, and frequent applications are made to the Board for a grant? A. No, sir; the applications for grants in Camden and vicinity are very infrequent. The channel as I remember it, north of Camden, is on the

other side of the river. The United States Government made certain improvements there, the effect of which were to throw the channel on the Philadelphia side. They built a break-water that completely shut in our riparian land and made it practically of no value.

Q. I now will show you one of the official maps of the Board of Camden, giving Petty's Island and the Delaware River, and ask you if it is not true that during your term that at least seven grants were made by the Board on the Delaware River near Camden and opposite Philadelphia, and very near to Petty's Island? A. I don't know that all those grants were made during my term.

Q. Assuming that official map is correct? A. I don't think I was there in 1904, December.

Q. What are the times of the grants there, pick out any that are during your term? A. These here were.

Q. Which are they? A. North of Fisher's Point.

Q. Is it not true that large manufactories, shipping yards, the American Dredging Company, and other large institutions of that kind are located right along in that vicinity? A. I don't think there is anything there; I don't think there is any industry there.

Q. What price have you asked for property, for water front? A. I think that is absolutely undeveloped.

Q. What price have you asked for lands down there? A. I don't remember.

Q. Have you any recollection of any prices that were charged by you for grants that were made by you and your associates on the important point on the Delaware river opposite Philadelphia? A. That is not an important point; that land is of very little value.

Q. Leave out the important point, and call it the point; have you no recollection of any of the prices charged by you? A. I would not attempt to testify to the prices.

Q. Is it not $2.00 and $3.00 and $3.50 per foot? A. It may be.

Q. Which do you consider the more valuable, the Delaware River opposite Camden, or the Shrewsbury River? A. There is no comparison.

Q. Which do you say would be more valuable per front foot? A. I think the grants in the Shrewsbury River were as valuable at certain points, were more valuable—not for commercial purposes, they are valuable there for private purposes—than those grants you speak of about here.

Q. Do I understand that you wish to let this Committee understand that it is your view that the grants on the South Shrewsbury River were worth more per front foot than the grants on the Dela-

ware River opposite Philadelphia? A. I don't mean the Committee shall understand anything of the kind. You directed my attention to four specific grants near Fisher's Point; you asked me if there are grants on the Shrewsbury River that are worth more than that. I think there are. Not all places on the Shrewsbury River, nor all places at Camden opposite Philadelphia.

Q. I will ask you again— A. As to these specific grants, I think that is true.

Q. Is it not a fact that you haven't charged any more for the grants that have been made on the Delaware at and near Camden, and opposite Philadelphia, than you have for grants on the Shrewsbury River? A. That may be so, I don't know. There are some very valuable pieces on the Shrewsbury River.

Q. Why do you stigmatize these grants as if not worth much, that I refer you to? A. For this reason, the Board two or three times visited that locality, and also presented a protest to the United States Government, on account of the improvements that were being made on the Philadelphia shore by the United States Government. There was a good channel that formerly ran down this shore, past the City of Camden, and the effort of the Government, under the River and Harbor bill, was to throw that channel on the other side of Petty's Island, and along the shore of Philadelphia. To assist in that purpose they built this bulkhead down here, which goes down here, and there is some talk that ultimately they intend to continue it to Petty's Island—whether they did or not I can't say. It resulted in a dead end here behind that bulkhead, and the channel was gradually filled in. This don't show the depth of the water, but it can be seen in here. But there had been grants made to some of these people prior to the building of that bulkhead, some time before; and when the bulkhead was built they had it extended out to this bulkhead in order to give them a facing on the water, otherwise, they were cut off by this bulkhead. As I recall the situation, there is no manufacturing industry whatever in this location, and the last time I saw this location, which was about a year ago, passing there, there never has been any development under any of these grants; nothing has been filled in and nothing has been done.

Q. Is it not true that this dyke appears to have been adopted the 29th day of May, 1895, and that the grants which your Board made extend out to the dyke line, and if it is not true that those grants were there made as indicated during your term at about the rate of $2.50 to $2.00 per foot? A. I can't remember the price; whatever the record shows is probably the truth.

Q. Can't you remember anything about that? A. I suppose there were 1,000 applications before the Board while I was a member, and it is beyond the possibility of my recollection to give the specific price charged for each grant. I can give you a general idea.

Q. I ask you the general price for grants along the Delaware river; was it not something between two and three dollars? A. I can't tell you, somewhere in that vicinity.

Q. Do you have no theory? A. I know it is not less than two or over five, but as to the specific amount I can't tell you.

Q. That extends out to that bulkhead line, didn't it? A. I think there were some grants there that were made out to this line, which was the original riparian exterior line.

Q. That is 1881, a fishing club apparently. Were any others made during your term? A. I think there were others, and some were extended out. At any rate, they had to go on the dyke.

Q. Do you recognize that as an official map? A. Yes, sir.

Q. That is supposed to be correct? A. Yes, sir.

Q. Now then, will you refer to that and point out the grants? A. I don't see any there on the map.

Q. Don't these grants go right out to the open Delaware? A. Out to the bulkhead.

Q. Is that the limit of them? A. I think we fixed our exterior line just on the outside of the bulkhead. The Goverment would not permit us to interfere with the bulkhead.

Q. Is not the open Delaware right there then? A. Yes, sir.

Q. You feel then, that a fair price for the State to have received for a grant extending right to the open Delaware opposite Philadelphia, and right at this very neighborhood of Camden, was somewhere from $2.50 to $5.00 a foot? A. Yes, sir; in that location.

Q. And as evidence of that, there has never been commercial development of any kind whatever, even on the grants.

BY SENATOR MINTURN.

Q. Who fixed the bulkhead line? A. The United States Government; we could not interfere with that.

Q. Don't this Board have a bulkhead line? A. We had a line shown on this map, where I am pointing, inside of the bulkhead line established by the United States Government; that was a dyke; that dyke was not built for commercial purposes, but to drive the channel on the other side of the river.

Q. Did this Board undertake to fix an exterior line of solid filling? A. Yes, sir.

Q. Did they consult the United States Government on that? A.

We generally did, but the Government didn't consult us in fixing its line.

Q. They had a right, but I am questioning your right. A. We cannot fix lines beyond those established by the Government without their consent. We can fix a line, but the applicant cannot use it without the consent of the Government. It was customary for the Board to consult the United States Government before fixing the line. This is not the line fixed by the Government for bulkhead or piers. It was a dyke built by the Government for the purpose of improving the navigation of the river. We find that dyke established a considerable distance outside of the line fixed by the Riparian Commission. Thereupon the Riparian Commission having no option in the matter, moved its line to the line of the dyke, and the grants were made there in that particular location, and the further out the grant goes, the grantees have to go to get to navigable waters, the less valuable are the grants. If navigable waters come right to the shore, the grant would be worth more, a great deal more.

Q. Do you think by any act of the Legislature or decision of the Court, that there is any power in the Riparian Commission to make a grant of land beyond low water mark, and between low water mark and the exterior line of solid filling or the bulkhead line? A. You are asking me a very delicate question, my opinion upon that point. I want to say this, if it is proper to say it, that my private opinion, not in my official capacity as a member of the Board of Riparian Commission—the entire system of riparian laws, considered as a pure matter of law, is unconstitutional. But I doubt if the Court will ever so hold them on account of the extensive vested interests that have acted under them, and if the Court did so hold them to be unconstitutional, I should consider it the duty of the legislature to confirm the title of all people who have acted in good faith under them and purchased lands and made improvements. My reason for thinking them so is probably not the reason you have in mind. My reason is based on the fact that the original act of 1864 is an act entitled substantially, to ascertain the rights of the State in the lands under water on the Hudson river, New York bay and the Kill von Kull.

Q. That was in my mind. A. And subsequent legislation has been altogether a matter of amendment and supplemental to that original act, with very few exceptions; and that all this system which has grown up of authority to sell lands, appointment of Commissioners, and the entire system of riparian legislation, founded on the original title, I believe to be unconstitutional.

Q. I think you are right in that. A. That is my private opinion. If I may go a step further, I would like to say to this Commission, that if it comes within the scope of their appointment and duty, and they can see their way clear to provide for a substantial and logical revision, having in view the rights already acquired by private parties and the system of riparian acts, they will do a great good to the State and they will wipe off of the statute books a series of laws that are most confusing and contradictory, and do not in any way form a complete system for the sale of the lands of the State.

BY SENATOR WAKELEE.

Q. Did the Board, while you were a member, make any recommendation to the Governor or the Legislature of the kind you are now stating? A. Not on the constitutional question. My recollection is, although I may not be certain about that, there was some recommendation as to the revision of the laws.

BY SENATOR MINTURN.

Q. Did you ever see the report that the Commission of 1864 made to the Legislature? A. I don't think I ever read that.

SENATOR MINTURN.—Have you seen that, Mr. Attorney-General?

MR. McCARTER.—Yes.

SENATOR MINTURN.—I suppose it will be offered here?

MR. McCARTER.—Yes, sir.

A. I want to say that I submit that opinion to the Commission with considerable modesty.

BY MR. McCARTER.

Q. Did you hold that when you were a member of the Board? A. Yes, sir.

BY MR. CROWTHER.

Q. Do you suppose that the alleged domination of Mr. Record had anything to do with keeping that under? A. I don't know anything about the domination of Mr. Record, but I never considered that my private opinion of the constitutionality of the acts under which I was appointed was of any public interest. I may say that is a private opinion that is oppossed to the decisions of the courts; the State courts have held to the contrary.

MR. BARBER.—I presume the courts have been in error.

MR. McCARTER.—That is all I have to ask of Mr. Fisk. I feel we are all indebted to him for coming here.

BY SENATOR MINTURN.

Q. I don't understand that the Supreme Court has ever held any further than this— A. You mean in the Hoboken case?

Q. That the State has a proprietary right which it may convey in

the land between high and low water mark. It does not go any further than that. The grants made by the Riparian Board go further; they not only convey to the line for solid fillings, but to the exterior line fixed by the Goverment,fixed by the Riparian Board themselves. A. I was always of the opinion that at least it was true on the Atlantic Ocean, even with a direct legislative grant there, because I doubt whether the title of the state to the land under water extends beyond low water mark on the high seas.

Q. I think the title extends, but I don't think the State has a right to convey. A. I don't think the title extends below low water mark on the high seas, but I may be wrong about that. Those are purely speculative questions.

BY ASSEMBLYMAN CROWTHER.

Q. Were you a member of the Riparian Commission when the grant was made to the Cheseboro Vaseline Company, which is now under the Standard Oil, on the Raritan river? A. When was that made?

Q. Possibly three or four years ago. A. I think I have been out of office some three or four years. I don't remember.

Q. I would like to ask you what the price for that was. The reason I speak of it is because some of the property in that vicinity was sold under a partition sale some few weeks ago, and brought at the rate of about $250.00 per foot, nearly $200.00 per foot. A. That is with the upland?

Q. The upland was very inconsiderable, just ran along the street.

MR. McCARTER.—Mr. Payne can give you that.

MR. PAYNE.—In 1903, at $15.00 per foot.

BY MR. McCARTER.

Q. Do you remember the date when you retired? A. I do not, it was the last year of Governor Murphy's administration, whenever that was.

Q. That is all. A. With the permission of the Attorney-General and the Committee, there are two or three matters connected with my testimony that I would like to speak about a little more at length.

Q. Certainly. A. Senator Minturn inquired the other day whether the Board of Riparian Commissioners in the discharge of their duties, sent out real estate appraisers to appraise the value of the land for which application was made. I said they did not. That leads me to call the attention of the Committee to the fact that such appraisement by real estate appraisers would be of no value. Fixing the value of riparian land under the present law is a very difficult matter, and cannot be dealt with as you would fix the value

of an ordinary piece of land. That is so for two or three reasons; in the first place, the State has not an open market for its land. It cannot open a piece of land for competitive building, or have two or three purchasers for the same tract. There is but one purchaser for any specific tract of land, and that is the owner of the adjoining upland. He is practically the only purchaser. There is a provision of the law, it is true, that provides for the giving of six months' notice by a stranger to the owner, and in the event that the owner does not take the grant, that then the stranger may do so but practically that is inoperative for two reasons; one is, that in 99 cases out of a 100 the ownership of the land under water, when the ownership of the adjoining upland is of no value, the land under water could not be used without access to it, and in connection with the adjoining upland. And, furthermore, no careful lawyer would advise any man to invest in a title founded on that notice, and as a matter of fact, if my recollection serves me right, since the Riparian Commission was organized, there has never been any grant made under those circumstances. So that the statute is confined to one purchaser. If you can fix a price that makes the land of any value to that purchaser, the adjoining land owner, he will take it. If you can't he won't take it, and you can't sell it to anybody else.

Now, as to the policy to be pursued by the State in fixing the price of riparian land; there are two courses to take: either the officers charged with the sale of the land can put on the land a price that is speculative, having in view future increase of values, and wait until those values are obtained, or they can adjust the price at the present day at such a sum as will induce the applicant to take a grant. Those are the two policies that can be adopted. If you adopt the policy of putting a speculative price upon the land, you are apt to produce serious consequences. For instance, if you should take the Hudson river front at any point in the last twenty years, and place a price on it that was prohibitory for the time being, it would result in absolute paralysis of any commercial development. There would be no buildings erected, no factories constructed, no increase in the tax ratables, no employment of labor and no development of the water front. If that policy is wise, why that would be the result. If, on the other hand, a price was made that would encourage the location, especially in a place where no development has taken place—of factories and other industries, it has two effects; it increases the tax ratables of the locality, it brings money into the State, and it produces an increased value in the remaining lands of the State held for sale.

Those are the two policies that the State can adopt. The question of judgment as to which should be adopted, is another matter.

BY SENATOR MINTURN.

Q. Would not the last which you have spoken of be the case as well under a lease made by the State as under a grant? A. That will bring me to another subject I desire to speak of. I want to say that our water front is in competition with other locations. We have a water front on Long Island and at Staten Island that is in competition with the water front on the Hudson river and the Arthur Kill and Staten Island Sound, and the policy of the State of New York has been to sell its riparian rights at a practically nominal figure. They have never made it a source of large income to the State. They have not adopted that policy, and, therefore, we are in competition with that water front when it comes to the development of the commercial interests of the two States. The Senator has asked me about a lease being preferable to a grant, and I want to say distinctly, that my opinion for years has been, that the entire policy adopted by the State in respect to the disposal of riparian lands was wrong; that the State never should have sold a foot of its riparian lands, that the entire water front of the State should have been preserved and should have been put out on lease. That these leases should have been for limited terms, with proper provision for revaluation at the end of the term. Then if the State desired to encourage industries to come within its border and establish themselves, it could very well afford, under a lease of that character, to give such an industry a lease at a practically nominal rent for the first few years, until it was established, with an increase in rental during the remainder of the term, say for a period of twenty years—and at the end of that time, if any mistakes have been made for valuation or rental, it will be corrected by the renewal price that will then be charged. As it is now, when the State parts with a piece of land it does so forever, except by means of taxation, and it must now obtain a full and fair value, and if an error is made it can never be corrected. That has always been my opinion and I urged it strongly upon the Board, and was so interested in it that I prepared an act which would enable the State to lease its lands under such conditions. I submitted it to the Governor and to the then Attorney-General, and it was passed by the Legislature and is now on the statute book. The State Riparian Commission now have power, without any further legislation, under Section 41 of the General Statutes, to make any terms as to lease that they see proper.

Q. That leaves it optional? A. Yes; with the Riparian Com-

mission, but the power is there. I then sought to have that policy adopted by the Commission and the Governor, and we then ran across a practical difficulty that required additional legislation. We found it was impracticable to say to a manufacturing concern, or a corporation desiring to establish a large industry, that we would lease that land for twenty years, no matter how favorable the terms of lease might be for the twenty years for the land upon which they were to erect buildings and spend large sums of money, if at the end of the twenty years the State was to fix a price and make a revaluation of the rental. It was suggested then, that a contract might be drawn by which, at the end of twenty years, or any other term that might be selected, the revaluation should be fixed by arbitrators, one appointed by the State, one by the owner of the land, they to appoint a third, with a provision of appeal to the courts, the same as in condemnation proceedings, if either party was dissatisfied. It would be impossible to get such contracts accepted by the applicants. Then it was ascertained that that could not be done under existing law, for the reason that the Legislature has delegated to the Board of Riparian Commissioners, with the concurrence of the Governor, the duty of fixing the price for grants or leases, and that that Commission cannot, without additional legislation, delegate that power to appraisers or other people whom they appointed or named.

Q. But the Board would fix the price in the first instance? A. I am speaking of the renewal.

Q. I mean of the renewal; they might do it? A. It was found, as a matter of business, impossible to get applicants to accept a rental under a lease of twenty years, invest two, three, four or five hundred thousand dollars in buildings and improvements on that land, and at the end of twenty years not know who was to fix the price for the renewal, or under what conditions it was to be fixed. They were very polite in saying, "We know the present Governor and Commissioners and we would be quite willing to leave it in their hands, but we don't know who will have charge twenty years from now." To overcome that objection the suggestion was made that contracts should be drawn providing for the appraisement by arbitrators, and an appeal to the Court, the same as in condemnation proceedings, but that cannot be done without additional legislation, because I was advised by the Attorney-General, that the Board cannot delegate that power of fixing a price to appraisers by contract. Governor Voorhees was very much interested in that subject, and you will find in one of his annual messages to the Legislature a discussion of

it, and a recommendation that such legislation should be had; but it never has been taken up or anything done with it.

Whether the policy of the state now could be changed, is a question that needs careful consideration. I think theoretically the state made a mistake in the beginning, and no grant should ever have been made; but that policy has continued for a long number of years, and whether it could be changed with the remaining lands of the state, requires careful consideration, because as soon as you change that policy and no more land can be purchased, you will immediately add immensely to the lands under water that are now in the hands of private owners, and that are not hampered by any such limitation.

Q. I want to ask you about the land in front of city streets; what has been the policy of the Board in regard to those grants? A. Ever since I was a member it refused to make grants to anybody but a municipality for lands on front of the streets.

Q. Were you in the Board when the Hoboken grants were made? A. No, that was long before I was in the Board. There never was a grant made that I know of, that we know about, it might be by inadventure to a private party of land at the foot of a street, and there were several grants made before the decision with regard to the school fund question, to municipalities for public purposes, and to revert to the state if they used them for any other purposes. There were grants made in Bayonne and South Amboy, and to a number of other municipalities.

Q. While you were in the Board you always contended that the municipality was entitled to the right or preemption of this land? A. Absolutely. We never made a grant of any land in front of the street while I was in the Board.

Q. Or in front of the park? A. No, sir; there was application for a grant there in Hoboken, for the North German Lloyd Steamship Company, but that was by agreement with the City of Hoboken.

BY MR. McCARTER.

Q. Is the statute which you drew and succeeded in having enacted— A. I made no attempt to have it enacted.

Q. Is that the one approved March 20, 1891? A. This is it, Section 41.

Q. Yes, that is it. Section 4 of that act provides as follows:

"That the Riparian Commissioners, or a majority of them, together with the Governor, shall not hereafter be required to give leases for lands of the State under water, convertible into grants upon payment of the principal sum mentioned therein, but may let or sell any of the lands of the State below mean high water

mark, upon such terms as to purchase money or rental, and under such conditions and restrictions as to time and manner of payment, the duration and removal of any lease, the occupation and use of the land sold or leased, and such other conditions and restrictions as the interests of the State may require, as may be fixed and determined by the said Riparian Commissioners, or a majority of them, together with the Governor."

Now, did the Commission once during your incumbency, and after that act was passed, although you remained a Commissioner for eleven or twelve years after it was passed, avail themselves of that authority? A. I don't think they ever did. I don't recall that they did.

Q. You stated last week that there were some cases where the Commission had taken advantages of the necessity of the people who had to have the land; why, if such conditions existed, didn't you insist upon that statute then being complied with, and leases, which you say were the true and proper way, being adopted? A. Well, my insistment would not necessarily carry with the Commission.

Q. I don't mean you, but the Board itself? A. I can't tell you that. I was always in favor of that policy, I will say that.

Q. Is it not a fact that during your term, and while Mr. Farrell was a member of the Board as well, that Mr. Farrell and generally Mr. Holt generally resisted sales, and that you and the other members of the Board generally favored sales; is not that a general statement of the attitude of the Board while these gentlemen were members of the Board? A. I think not, sir. I never heard that discussion. Q. That is all.

BY SENATOR MINTURN.

Q. I want to ask you about that act of 1871. A. That was one of the sections of the original act of 1869; that was supplemented or altered by the act of 1871.

Q. Do you know whether any grants were made under that act while you were a member, a grant of land filled in? A. Yes, quite a number. There have been grants of land in Jersey City as far up as Pavonia avenue almost, that have been filled in for forty years.

Q. Filled in by whom? A. I don't know, land built up, right up in the city.

Q. Didn't the Board make any effort to ascertain what rights the owners had in those lands? A. They made the grants to the then owners. They had a price of so much a lot, 25 by 100. This was up in the city, been built on for forty years or more, and occasionally some over-careful lawyer or title company would request a sort

of a quit-claim from the State on lots of that kind. I think we charged twenty-five dollars a lot. That was the land that has tenements on it.

Q. That was done for the purpose of perfecting the title of the private owner? A. Yes, sir, they used to do it for five dollars per lot before I went on the Board.

Q. That is all.

MR. McCARTER.—It is so near adjournment, that with the Committee's permission, instead of putting on Mr. Cloke, whom I will call immediately after lunch—

MR. FISK.—There were one or two matters I desired to speak of.

MR. McCARTER.—Excuse me, go on.

A. I have been asked by the Attorney-General at the last session in respect to the license of the Navesink Railroad. At the time I testified, I did say purely from recollection, and without then having inspected the minutes—although I did apply to the secretary for that purpose and had been unable to see them. I testified that my recollection was that Attorney-General Stockton attended the meeting at which this was considered, gave a verbal opinion favorable to the granting of the license, which was subsequently put in writing, and it was on his opinion that I must act in the matter. The Attorney-General subsequently was pleased to say to the Commission that he had no doubt that when I so testified I believed what I said, but that I must be mistaken, and that he was quite certain in his own mind that Attorney-General Stockton never gave any such opinion. I thanked the Attorney-General for giving me credit for believing what I said. But I want to say that I didn't speak from any belief about the matter, but from a distinct recollection, and that subsequently, when he showed me the minutes, it appeared that at the first meeting when this application was presented, the Governor and the Board and the Attorney-General were present; and that at the second meeting when the application was passed, the resolution recited that the license should be executed in the form theretofore approved by the Attorney-General, so that it would seem that my recollection was in accordance with the facts. My recollection is distinct that the written opinion was furnished by the Attorney-General subsequently, and why it is not produced by Mr. Payne I don't know. It was certainly with the records of the Board.

The Attorney-General asked me to explain why the then Attorney-General, Mr. Stockton, subsequently gave an opinion to the Board which was contrary to the opinion which he gave in the Navesink

Railroad case, namely, in connection with the Atlantic City application for license. My understanding is, that the Attorney-General didn't give an opinion at that time, but that an opinion was written by Mr. Record, the then counsel of the Board, and that the Attorney-General concurred in it in writing at the bottom of the opinion. That opinion is not contradictory of the opinion given by Attorney-General Stockton in the Navesink Railroad case, because the cases were entirely distinct.

In the Navesink Railroad case the Attorney-General held that under the Thirty-sixth Section of the Railroad Act a railroad could cross lands of the State lying under the waters of bays, harbors and rivers, by applying to the Riparian Commissioners and obtaining license and paying compensation, etc.; and that the section applied to the Bay of New York at Atlantic Highlands. The application at Atlantic City was not to cross the land of the State under any bay, river or harbor, but to cross the land of the State under the Atlantic Ocean and the high seas, and the railway as projected didn't touch the upland at any point. It began in the Atlantic Ocean and ended in the Atlantic Ocean and was not a crossing of any kind or description, and as I recollect it, it was upon that point that the Attorney-General held that the section of the act didn't apply.

The matter of the Edgewater and Fort Lee license—

BY MR. McCARTER.

Q. Before we leave that, let me ask you a question; you have given us nothing new in regard to that situation, except to ventilate your construction of it. I said at the last meeting, and I still adhere to the view that Attorney-General Stockton never gave any written opinion such as you say he did. No record shows that he did. There is not a word on the minutes to indicate that he did, and the only opinion that he did give in writing, so far as the record discloses, is exactly contrary, and in stating, as you have a moment ago, that the subsequent opinion was not on that point, you evidently overlooked this paragraph. A. Were the cases similar?

Q. The opinion says: "It is obvious that there is no power given to the Riparian Commission by this section to grant the right to parties to locate and construct a railroad along the whole front of a city passing in front of riparian proprietors against their will, and convey the land for the same. The provision on the statute is confined entirely to crossing the land of the State and provides minutely for draws, lights and other means to facilitate and protect navigation." A. That is Mr. Record's opinion.

Q. Concurred in by Attorney-General Stockton. I want to know

if you had overlooked that clause of that opinion when you said that he didn't give a written opinion inconsistent with the alleged previous verbal one? A. Not at all.

Q. You think that is perfectly consistent with the other? A. Yes, sir; he said such right could not be given as against the right of the riparian or shore owner.

Q. He also says, that "the provision of the statute is confined entirely to crossing the land of the State and provides minutely for draws, lights and other means to facilitate and protect navigation." How do you consider that as favoring the idea that you can go a mile and a half along the shore of the river? A. I have never been favorable to that idea.

Q. I didn't ask you that. I asked you how you construe that statement of Attorney-General Stockton as consistent with the idea that you could go along the shore for a mile and a half and not cross a river at all or have a draw or bridge? A. I never agreed with that proposition.

Q. You have said that this opinion is not inconsistent with the view that you say the Attorney-General announced in the Navesink case? A. As I understood it, it was not, and if you will permit me to refer to it—

Q. Certainly. A. This was the opinion of Mr. Record concurred in by the Attorney-General. It goes on and says: "The route of the railroad as filed in the Secretary of State's office, shows that the land they desired to be conveyed is much of it below high water mark on the Atlantic ocean"—

Q. As has been stated about half a dozen times before, that is an application, as you say, for a trolley road, although it appears to have been organized under the general railroad law and is on the Atlantic ocean. We understand one was along the Shrewsbury river, and the other was an application along the Atlantic ocean. That is all understood. The point I make is, that one of the reasons that induced the Attorney-General, and the then counsel of the Board to object to it, was the fact that the statute didn't apply to anything but a crossing. Now, how do you say that is consistent with the other? A. I have presented my view to you and to the Committee, and as to its value, they can form their own opinion. I don't care to enter into a legal discussion with you about it.

Q. You have given a legal opinion which I have no doubt will weigh with certain people, and I want to know how that would be consistent with that extract? A. If I was to read the whole opinion—

Q. You may read the whole opinion. Let the witness read the

whole opinion ; we know it by heart, most of us. I wish it to be distinctly stated in the record and newspapers that Mr. Fisk wishes to read the whole opinion that has been read two or three times before. A. I don't wish to read it.

Q. You told me I didn't give you an opportunity. A. I beg your pardon ; you seem to be getting somewhat warm.

Q. I don't think it is fair to suggest that I haven't given you a fair chance. A. I haven't suggested that.

Q. I ask you how you reconcile the clause of the opinion which I have read, that it is not inconsistent with the view that he expressed that the thirty-sixth section gave a right to build a railroad for a mile and a half along the shore? A. I desire to say that your question that I say he expressed that view is an inference that is not proper—I say he did so express it.

Q. All right. A. I have nothing further to say in this matter than to say that in my judgment, poor and unimportant as it may be, that there is nothing in this opinion of Attorney-General Stockton in the Atlantic City cases, that is inconsistent with the opinion that he gave in the Navesink case, and I prefer to leave it to the Committee to judge upon that question.

BY SENATOR WAKELEE.

Q. Don't he say in that opinion that that act only applies to crossings. A. He does not say that there may not be crossings with lights and bridges, there are many, and that was the surprising part to me in the Navesink case, that he did decide that that was such a crossing as came within the provisions of that thirty-sixth section. I was a young man at the time, it was sixteen or eighteen years ago; Attorney-General Stockton was a lawyer of very distinguished reputation, and the legal adviser of the State, and, therefore, the private opinion I held about that time was of no consequence as far as he was concerned.

There is another matter I desire to speak of, the Edgewater and Fort Lee grant which has been testified to before the Committee by Mr. Payne, that when that grant was originally made by the Governor and the Board, that in his judgment they gave away for $1,500 rights of the State which were worth fairly $40,000. The Attorney-General has been pleased to say to this Committee, with some heat, that in his opinion the giving of that license, was a fraud and a sham.

Q. That is what I think. A. I want to quote you correctly. Now, then, if Mr. Payne is correct in his statement, and the Attorney-General is correct in his opinion, there are but two conclusions to be drawn. One is, that at the time that license was given, the

members, the Governor and the members of the Board were guilty of the most atrocious carelessness and neglect of duty in giving that license, or that in the giving of that license there was perpetrated a gigantic fraud. I don't believe either of those statements, and I deny them; but assuming that either is correct, I want to direct the attention of the Committee to the subsequent events.

Now, as has been frequently stated, that license contained a provision that if the railroad was not completed in two years, and in operation, it should be void. That provision I may say was inserted at my own suggestion in the license. It was not to be completed and in operation over these thirteen tracts of land, but over the entire route of the railroad, from the Susquehanna railroad to the Fort Lee ferry. Two years rolled around and the railroad was not completed.

BY SENATOR WAKELEE.

Q. This is all in evidence. A. I know, but I desire to call attention to two or three acts in connection with it. The license was subject to revocation. Mr. Record was no longer counsel; the Attorney-General was the legal adviser. The old Board had gone out of office, the present Board was in office, the Board which, happily for them, have so far escaped the criticism of Mr. Payne. Mr. Payne stated that, at a fair price, this was worth $40,000. Application was made, for renewal, for nothing. Mr. Payne didn't then state to the new Board that it was worth $40,000. The assistant to the Attorney-General was present, and he was not surprised at the form of the request, or that it was unusual, and it was granted and referred to the present distinguished Attorney-General, and after considering it he wrote to the Board. He didn't find it was a surprising paper, or an extraordinary document, or that it was a fraud or a sham, but he wrote to the Board that in his judgment—

Q. You had better quote the letter accurately. A. That he had considered the form of the license and it was in all things correct. I have no criticism to make of the Board or of the Attorney-General in his opinion, or of the Assistant Attorney-General, or of anybody else; I think they did exactly right. Now, two years go by and the license again runs out, and there is an application this spring for a renewal on grounds that seem to be perfectly proper reasons why the railroad has not been completed. Mr. Payne, at my request, is sent by the Board to investigate the location, and he makes a written report in favor of the application, and without a suggestion that it was worth $40,000 or any other sum. The Board referred the matter to the Attorney-General, and it is now before him for his official action, and he has not yet taken his official ac-

tion, and I was, therefore, much surprised to hear him express his opinion before this Committee in the way he did on a matter that was before him in a semi-judicial way. I, therefore, feel justified in saying to the Commission that I called on the Attorney-General two months ago, presented the facts, talked over this opinion of Attorney-General Stockton, and the Attorney-General didn't seem surprised, that this was an extraordinary paper, and didn't say anything about its being a fraud or a sham, but on the contrary, he was kind enough to say that he thought the application was meritorious, and if, in view of the recent decision he could advise the granting of the license, he intend to do so. Since this investigation opened I have seen the Attorney-General in connection with Mr. Brownell, the general counsel of the Erie Railroad, and he has reiterated the statement that he thought the application was meritorious, and if, in view of a recent decision of the court, he could recommend the license being granted he would do so, and that is where the matter stands when the Attorney-General makes this public announcement to the Committee that it is a fraud and a sham, and I feel justified in saying these things to the Committee in reply.

There is one other matter, some comparison—

BY MR. McCARTER.

Q. Let me ask you one or two questions about that; at the last meeting, both in public session and private session, you rather took me to task, in a sort of a disagreeable way, for having brought out before the Committee the fact that as private counsel you had appeared in this second renewal, and I told you it was done for the purpose of not in any way criticising you, but you have now seen fit to publicly state in the public investigation your recollection of the conversation had between yourself and Mr. Brownell and me in my office in Newark, where you came out with Mr. Brownell, to assist you to persuade me if you could—which you haven't yet done—to recommend the Board to make this renewal, and when I told you my view of the law as I understood it, do you recall in Mr. Brownell's presence you said, "Attorney-General, you need not raise that objection, that is not within the purview of the submission to you, in Mr. Payne's letter to you; ignore that and answer the questions that are only submitted and let this thing go through." Do you remember that? A. I distinctly remember it. I thought you were only called upon to answer the questions of the Board.

Q. Have I done what you asked me to? A. You haven't done

anything except to say to this Committee that it was a fraud and a sham. That is the next I heard from you again.

Q. In reciting what occurred, you didn't recite that you tried to persuade me to suppress my doubt in regard to the legality, and simply advise the Board on the questions they asked ; they hadn't raised this question, and to let it go on that. You didn't tell this Committee that that occurred in Mr. Brownell's presence? A. If you think I could have persuaded you to do something that was improper, you reflect on yourself ; I never thought so.

Q. I don't know what the object was of your speech about a private interview between you and me. A. Simply because you saw fit to characterize this matter, which was pending before you, as a fraud and a sham ; I simply wanted to state the facts ; if I misstated them I want to be corrected.

BY SENATOR MINTURN.

Q. Who was Brownell representing? A. The Erie Railroad.

Q. They were not applying for this grant? A. I understood they are subsidiary company of the Erie.

Q. What is the name of it? A. The Edgewater and Fort Lee Railroad.

Q. Controlled by the Erie Railroad? A. I believe so; I didn't form the railroad.

I want to say one other thing, if the Committee will permit me, and that is somewhat personal in its nature. I was present in Jersey City at the last session of the Committee held there, when Mr. Payne was on the witness stand, and this relates to his testimony. I speak of it with some reluctance, because I have known Mr. Payne for a great many years, and the relations between us up to the time of his testifying were of the most friendly character. As I understand it, Mr. Payne was called before this Committee, and he has been quoted in the newspapers, primarily to produce the records and to give the Committee any information from the records that he had, which would them aid in their investigation, and of course to that there can be no objection. I have by me a newspaper report of his testimony, giving what seems to me to be a correct report, and I doubt not the Committee will recollect it. At that time Mr. Payne said this :

"The Board was the growth of a kind of family relations ; in all the years before the new Commission came in it was a family affair and was shamefully administered."

Now, I served on this Commission with Governors Abbett, Werts, Griggs, Voorhees and Murphy. Four of these men were lawyers of

distinguished reputation. I served on the Commission with a number of fellow members, men of character, standing ; those men are not here to speak for themselves. Some of them can't come, they are dead, and it is on their account more than my own, that I desire to enter an earnest and vigorous protest against any such statement as that being received in evidence by this Committee. It has no evidential force whatever. It would not be received in any Court, and it ought not to be received by this Committee from any witness, and particularly from a witness who, under oath, and with a great deal of seeming self-satisfaction, has admitted that he has been guilty of purloining the papers of a personal friend, and that he has been in receipt for years of money which he thought was illegal, and that he has called graft.

Now, if from the facts that are presented to this Committee the Committee find the same conclusion that were so glibly stated by Mr. Payne, why no objection can be raised. In my observation during my incumbency of the Riparian Board, the members endeavored to the best of their ability to discharge their duty faithfully, to the credit of the State and to its advantage ; but it seems to me that an irresponsible and unsupported statement of that kind should not go uncontradicted, and I respectfully request the Committee to instruct the official stenographer to strike that statement from the record as scandalous, and having a very high appreciation of the keen sense of honor of the distinguished Attorney-General, I asked him to join me in the request.

SENATOR WAKELEE :—The Committee is not governed by any strict rules of evidence, and are receiving opinions from witnesses. When the Committee will announce its decision, it will be governed by facts and not by opinion.

BY MR. McCARTER.

Q. What paper were you reading from when you read from the testimony of Mr. Payne ? A. The "Jersey City Journal." I don't know whether it is accurate or not. It coincides with my recollection of it.

MR. McCARTER.—I will now read from page 428 of the record, which apparently is the section referred to by Mr. Fisk:

"I was simply the engineer. It would seem that I have a lot of influence, but I didn't have any influences. I tell you personally and say to you now that the riparian interests of the State were a family affair, if not a personally conducted affair in all those years, and I believe that the riparian interests of the State have been shamefully abused in all of those years."

THE WITNESS.—I accept the correction of the record of the

newspaper report, and prefer the same request, that the statement that the riparian affairs have been shamefully abused for years, be stricken from the record.

At this point a recess was taken of one hour.

AFTER RECESS.

ATTORNEY-GENERAL McCARTER.—Before calling the next witness, I desire to make a statement to the Committee. The last witness, Mr. Fisk, saw fit to make some reference in his statement at the close of his testimony, to the fact that in an interview that he had with me as Attorney-General, as he stated it, I had not objected to what I had characterized, in the meeting here a week ago, a fraud, that I then believed to exist in this Edgewater matter when the question of renewal of that grant was before me for consideration. And while it did seem to me then, and seems now, that that was entirely unnecessary, lest there should be any misunderstanding, I desire to take this opportunity to publicly inform the Committee exactly what occurred since I have had anything to do with the Riparian Commission in connection with the Edgewater and Fort Lee matter.

I never had heard of the Edgewater and Fort Lee license, or of any matter in connection with it, until some time in September, 1904, when I received from John C. Payne a proposed form of extension of the license that had been originally given, which, as I recall it—I haven't the paper here, if Mr. Payne has it, I would be glad to have him produce it—recited the original grant, the fact that it was given on condition that the railroad should be completed within two years, the fact that the Board for reasons that were substantial and prevailing, had concluded to extend the time two years more in which the road should be built, and asked to pass upon the legality of that proposed paper.

At that time I neither knew of the terms upon which the original grant was made—that is, the consideration—nor had I the slightest information, not being at the meeting of the Board, of the terms upon which this proposed renewal was given. I was simply asked to pass upon the proposed form which was to be given, and in response to that I wrote this letter :

"I have examined the proposed form which you sent me and the same seems to be in all respects correct, and you may consider this letter my approval thereof."

I heard nothing more of the Edgewater matter until about June 28, when I got the following letter from Mr. Payne :

"Jersey City, N. J., June 28, 1906.

HON. ROBERT H. MCCARTER,
Attorney-General,
Newark, N. J.

Dear Sir : On May 28, 1902, the Riparian Commission issued a license to the Edgewater and Fort Lee Railroad Company to construct a railroad over lands lying along the Hudson river at Edgewater, under condition that the road should be constructed within two years.

On September 14, 1904, the road not having been constructed, the company made application and the Board renewed the license for two years.

Recently the company asked for a still further extension of the license, on the ground that the company has found it impossible to complete the construction of the road, although having done considerable work.

I am directed by the Board to ask your opinion (1) as to the potency or force of the license as issued ; and

(2) As to the rights acquired by the company under said license, as affecting the relations of the riparian owner with the state. I enclose herewith duplicate of the original license as issued, also of the re-issue of September 14, 1904. I am,

Yours respectfully,
JOHN C. PAYNE,
Secretary and Engineer."

Upon receipt of that letter, the enclosures were found to be in it, and for the first time I saw the original license, and for the second time the re-issue whose form I had approved of.

Up to this time I had absolutely no knowledge of the consideration that had been given in the first case, or that had been given in the second case, or that was proposed to be given in the third case, being merely consulted, as you will see, upon the purely legal questions, not being present at any of the transactions of the Board.

The next day I received a letter from Mr. Payne, dated June 29, 1905, in which he says :

" Dear Mr. McCarter : Perhaps I can be of some assistance to you in the two cases referred to you by the Commission at its meeting,

yesterday, and I should be very glad at any time to suit your convenience to come out and give you such assistance as I am able.

Yours very sincerely,

JOHN C. PAYNE."

I should say that another letter, under date of June 28th, about an entirely different matter, was received by me, and it is those two matters that Mr. Payne refers to in his second communication.

Mr. Payne came out. I had a long conference with him in my office in Newark ; the whole subject was gone over, and I for the first time received an intelligent knowledge of the transaction. As yet, however, the question of the consideration that the State had received from any of the past or proposed renewals ; was not in my mind. I took the matter under advisement, this, of course, was long before this Committee had started the subject of these proceedings. The Committee hadn't met yet.

On July 26, of my own initiative, I wrote this letter to Mr. Fisk, who, I think, in the meantime had either seen me or telephoned me, urging my prompt action upon this matter that had been referred to me, he being the counsel of the Edgewater Road :

"Newark, N. J., July 25, 1906.

MAJOR WILLARD C. FISK,
Commercial Trust Building,
Jersey City, N. J.

My dear Major :—Referring to the application of the Edgewater Railroad Company for an extension of the license heretofore granted by the Riparian Commissioners to it, I am a little troubled about the power of the Commissioners to make any such proposed grant, and I would like your further views. I observe that the original grant purported to be made pursuant to the thirty-sixth section of the old general railroad law, which has been slightly modified, as you know, in the sixteenth section of the revision of the railroad law of 1903. It seems to me that Justice Fort's construction of that section in the case of Schaumberg, 60 Atl. Rep., p. 43, indicates plainly that it is not intended to apply to a situation such as the Edgewater Company persents and, even if it were, I am troubled also to know how, under an act entitled "An Act concerning railroads," the Riparian Commissioners can be authorized to make a grant or license. All that the Schaumberg litigation seems to settle is, that the Commission is powerless to make a railroad company a grant or lease, without notifying the owner of the ripa. I understand that the grant in the Schaumberg case was very much more extensive than a mere license such as you secured, and

the renewal of which you now desire. Am I right about that? Under the Schaumberg decision, has the Board the right to convey any kind of an interest without notice to the owner of the upland? Please let me hear from you at your early convenience, as I am anxious to get rid of this matter."

Now, the Committee will observe that up to this time the difficulty in my mind originated in my mind, suggested by no one, was purely a legal one, consisting of two legal questions, and the amount of money that the State had received, or was expected to receive, hadn't yet presented itself to my mind. It was not a matter of moment to me. I never suspected that any such grant as was originally made, or was proposed to be renewed, had been given, or was proposed to be given for a mere song, as the evidence brought out, and this Committee has shown it was. It was a pure legal difficulty that I was trying to solve. I received a telephone from Mr. Fisk in response to that inquiry, stating that the questions were serious, that he had had a number of consultations with Judge Collins, and he sent me a letter under date of August 16, 1906, which I will read:

"Jersey City, August 16, 1906.

Dear Mr. McCarter:

Following our conversation the other day respecting the application pending before the Riparian Commission for an extension of the license of the Edgewater and Fort Lee Railroad Co., I have requested Mr. Payne to forward you a copy of his report made to the Commission, showing the result of an investigation made by him of the amount of construction already completed.

I enclose herewith two forms of deeds or grants which have been taken by the Board from adjoining upland owners, and a copy of a letter from Mr. Brownell, explaining these grants. As soon as it can be prepared, I will forward to you a map showing the location of the various parcels covered by the license.

Yours truly,

WILLARD C. FISK."

Enclosed was an opinion from Judge Collins taking a somewhat different view from what I took upon the legal questions that I suggested in my letter to Mr. Fisk.

I was subsquently visited by Mr. Fisk and Mr. Brownell. Mr. Brownell came in advance and waited half an hour for Mr. Fisk to arrive. A long conversation ensued, in which I re-stated my opinion, saying I was not convinced by Mr. Collins—still being ignor-

ant of any other consideration in this matter other than the legal one, and, finally, as these gentlemen found me obdurate on this legal question, Mr. Fisk first suggested, as he frankly stated on the stand, seconded by Mr. Brownell, that they could not see that it was my duty to butt in with new legal problems, and in view of the hard luck that this railroad was in, having spent so much money, they thought I ought to satisfy myself, notwithstanding the legal objections I had thus raised, to confine my reply to the State Board of Riparian Commission to the two little naked questions that were contained in the letter of June 28th of Mr. Payne's. The conversation ended with that. This investigation then commenced. I never have reached a conclusion in my own mind that satisfactorily answers the legal ohjections I raised, and I am afraid I never can. And in the meantime, for the first time in the investigation, which had now been under way for some three or four weeks, it has come to my knowledge what seemed to have been the paltry, absurd consideration that has been received for this valuable right; and it is that which has led me to this view, which I again repeat, that I entertain now, that I can't understand it, and that I believe the state was defrauded when this valuable right, of certainly doubtful validity or propriety, was granted at such a miserably low figure.

The only object I have in making this statement to the Committee is lest it may be misconstrued by something that was said by Mr. Fisk, that I have been in some way tied up to this enterprise. The correspondence I have read, shows, when I first considered the matter I raised the legal objection that Mr. Brownell, Mr. Fiske and Judge Collins all united in showing me I was wrong. That I am still unconvinced, and have to be convinced in order to make a favorable report to my principal, the Riparian Commission, to the effect that I approve of this license.

SENATOR MINTURN.—I understand you took the position that the Riparian Board had no power to grant a license, the way they have granted a license to this railroad.

MR. McCARTER.—That is the question I raised in that letter. As far as I know, that was the first time it was ever raised. I hadn't the familiarity with it that I have now since this investigation. I ought to state that I omitted one fact: in the course of one of the conferences with Mr. Fisk, in which this legal doubt that I raised was discussed, he suggested that there was on file an opinion of Attorney-General Stockton in the Navesink Railroad case justifying the grant ing of such a right. This was long before the investigation, you understand; long before there was any particular reason for that opinion

disappearing, you understand. I immediately wrote to Mr. Payne —the letter is here—asking for that opinion, and I have from Mr. Payne a letter in which he states that he has hunted in vain for the opinion, and he cannot find that any such opinion ever existed, and quoted the record that has been put on the minutes to the effect that, at the first meeting Attorney-General Stockton was present, and that at the second meeting he does not appear to have been there. All that was brought up by me before this investigation commenced, or the importance or unimportance of there being a written opinion of Attorney-General Stockton, so far as the progress of this investigation is concerned.

JOHN C. PAYNE recalled. Direct examination by Mr. McCarter.

Q. Reference has been made by one of the Committee to a grant down at Perth Amboy, to the Cheeseborough Vaseline Company; will you state when that was and what it amounted to? A. It was a grant executed on February 26, 1903, to the Cheeseborough Manufacturing Company on the Raritan river, Middlesex county, of 1,857 feet at the rate of $15.00 per foot.

Q. What date? A. February 26, 1903.

Q. Who were the Commissioners at that time? A. The Commissioners at that time were Messrs. Fisk, Cloke, Holt and Farrell.

Q. When any grant was made by the Board, what was the practice in regard to a map of the property being prepared and shown to the Board concerning the application? A. The practice was for the application to be shown to the Board, to be spread out before the Chairman of the Board and before the members of the Board; for the general map, that was the office record of the Riparian Commissioners, showing all the grants made, to be shown to the members of the Board, and at the same time for the Secretary of the Board to call the attention of the Chairman and of the Commissioners to the prices that were heretofore paid in that locality, and the matter was then left for their consideration as to price.

Q. We have been using for two or three days this long map that I have before me here, upon which I see under the numbers 30 and 31, "The grant to John M. Goetschius, September 25, 1901." Is this map or that part of it which refers to the Goetschius grant, a copy of any of your record maps? A. It is a sun print copy of the office record map. It simply appears in this long form for convenience, for reference. The office map is a map similar to that, (referring to a map), and a copy is made, and the strips were cut in

this way and connected in the proper way, so as to give the committee a proper idea of the relative positions of the sections. It is a sun print copy of the map.

Q. Then I understand on the original map, which we will produce at the next hearing—it don't happen to be here—of the territory to which the Goetschius grant belongs, the words "Lease to heirs of Robert Annett, April 18, 1874. Lease to heirs of Robert Annett, first tract, April 18, 1874" appear? A. Yes, sir; these are sun prints of the office maps.

Q. How long have they been on there? A. They have been there a number of years, perhaps ten years.

Q. Were they on the map that was shown to the Commission, or was that the map that was shown to the Commission at the time the Goetschius grant was made? A. That is the map that was shown to the Commission to show the location of the property.

Q. So that when the Commission had the map, as they always do, when the Goetschius grant was made, and the property pointed out, the words "Lease to heirs of Robert Annett, April 18, 1874. Lease to heirs of Robert Annett, first tract, April 18, 1874," appeared right there as it does on this map? A. Not only that, but the two docks which were made the subject of correspondence between Mr. Johnson and Mr. Record also appeared there, and these two docks were immediately over the words, "Lease to Robert Annett."

Q. Now, some suggestion has been made that there was some secrecy or some failure to disclose the fact of the existence of these leases; what knowledge had you, and what knowledge did you bring to the attention of anybody, otherwise than this map concerning those leases? In other words, what did you know about it at that time? A. I knew at that time, as I am sure at least one member of the Board knew, that these Annett leases had been the subject of legal attention by the Attorney-General's office for a number of years. I knew that Mr. Record, to whom alone legal matters were referred, and matters of title, was familiar with them I knew he was familiar with the leases on both sides, and I didn't know what the legal side of that lease was at that time. I presumed Mr. Record, having had charge of that matter, knew absolutely, and my impression was that in these suits that had been brought, that the Annett leases had been adjusted and cancelled. That was my only understanding. I found that from 1890 right down to the year 1901, and three months before this grant was made to Mr. Goetchius, that there are all of those pages (showing a statement) of reference in some way or other, that Mr. Record has been familiar with these Annett leases, and I hadn't any idea but what Mr.

Record would have in mind and call the attention of the Board to a legal matter of that kind, and I would no more have thought of calling the attention of the Board to a legal matter than to attempt to fly. It was not my business, and it would have been an impertinence on my part to call the attention of the Board to legal matters.

Q. Which member of the Board that you know, knew about the matter? A. Mr. Fisk.

Q. How do you know that? A. Well, I know it because Mr. Fisk was chairman of the Board for twelve years and thoroughly familiar with the matter, or should have been, and I know that when the Senate sent a letter to the Riparian Commissioners asking for a statement of the value of the State's lands on the Hudson river, that Mr. Fisk and Mr. Record contended hotly for two days about what answer should be made to the Senate as to the value of these lands, and the entire water front of the Hudson river was under consideration, and Mr. Holt and Mr. Farrell contended on the other side against such a report as Mr. Fisk and Mr. Record were interested in making, and there was no question in my mind but what Mr. Fisk was as familiar with the Annett leases; it was like a household word in the Riparian Commission.

MR. McCARTER.—I beg to offer in evidence an extract from the minutes under date of November 13, 1890, Minute Book 5, page 81:

"George L. Record, attorney for Hannah Hawes, presented application for the conversion of part of lease made by the Commissioners April, 1874, to Mary Reynolds and others for lands under water in the Hudson River at Fort Lee.

Which was referred to the chairman and engineer to confer with the Attorney-General as to the advisability of granting said application."

Under date of November 13, 1890, Minute Book 5, page 80, I find there were present, Messrs. Fisk, Herring, Ross.

Q. Who was chairman at that time? A. Mr. Fisk.

Q. In the minutes, Book 5, page 82, appears the following: "November 28, 1890. The secretary reported conference had with the Attorney-General relative to the application of Hannah Hawes for lands under water near Fort Lee in the Hudson River, and that the Attorney-General had advised that the application should not be granted. Report accepted." Have you any personal recollection of the facts connected with that minute? A. None whatever. I was not an officer of the Commission at that time, al-

though an assistant to Mr. Bacot. I think you will find these minutes signed by Mr. Bacot.

Q. So that, according to that report, it appears, signed by Mr. Bacot, that the question of converting a part of the lease, of the Annett lease, which was presented to the Board by Mr. Record, was referred to Chairman Fisk and the engineer to confer with the Attorney-General, and that the report was made that the Attorney-General advised against the conversion? A. Yes, sir.

Q. On the Minute Book No. 5, page 216, 217 and 218, the following statement appears:

"The secretary presented a list received from the state treasurer showing the rentals due and unpaid by lessees on leases heretofore made by the Commissioners to July 1, 1893, which was received and ordered to be entered on the minutes as follows:

Name.	Paid up to.	Semi-annual Rental.
James Annett et al.,	Oct. 18, 1875,	275.10.
James Annett et al.,	Oct. 18. 1875,	378.87."

Are those the two Annett leases in question? A. Yes, sir.

Q. I further find, on the same page, same minute, occurs this record:

"The said list was referred to the general counsel with the request that the attention of the Attorney-General and the School Trustees be called thereto."

Q. Who was the general counsel at that time? A. Mr. Record.

Q. So that as late as September 28, 1893, the list showing the rentals due the State on the Annett leases, among others, amounting to several thousands of dollars, was expressly referred by the Board to the general counsel, Mr. Record? A. Yes, sir.

Q. Being the same leases concerning which, before his connection with the Board as general counsel, he had in the year before applied for a conversion? A. Yes, sir.

Q. I further find the following letter from Mr. Record, dated October 16, 1893, addressed to the Honorable John P. Stockton, the original of which I will produce at the next hearing, and will ask you if this is in the files of the Board:

"1 Montgomery Street,
Jersey City, October 16, 1893.

HON. JOHN P. STOCKTON,
Attorney-General.

Dear Sir:

Mr. R. C. Bacot has handed me for reply your favor to him of the

15th inst. in reference to unpaid riparian leases. I have been working at the list of delinquents you sent Mr. Bacot for some time, under Mr. Bacot's direction, and will send you in a few days a report in two or three of the cases involving the largest amounts. I have found it much more difficult than I anticipated, in obtaining definite information in regard to the persons at present interested in the leases.

A register's or county clerk's search of the title to the upland takes time, unless one has expert local knowledge, and even a search does not reveal the history of the leases if assignments have not been recorded.

I have, therefore, been driven to personal investigation, in which I have been compelled often to spend a great deal of time for a very little accurate information. I have taken leases involving the largest amounts along the Hudson River as my first task, and will send you reports on each case as fast as it can be prepared.

Very respectfully yours,
GEORGE L. RECORD."

Q. Do you know which ones of the leases on the Hudson river show the largest arrearages? A. The Annett leases.

Q. I next refer the Committee to a letter, the original will be produced, it is not here today, it is dated Trenton, N. J., July 31st, 1894, addressed to Mr. George L. Record, Counselor-at-Law, Jersey City, N. J., and is signed John P. Stockton. The letter is as follow:

"Yours of yesterday received. You have my consent to use my name in the proceedings you speak of whenever it becomes necessary in fulfillment of the orders of the Riparian Commission."

In Book 5, page 281, appears the following minutes:

"The general counsel made a statement in relation to unpaid rentals on riparian leases, and on motion, the following resolution was adopted:

Resolved, that the general counsel of the Board be directed to take legal proceedings with the approval of the State Treasurer, and under the direction of the Attorney-General, to forfeit the riparian leases on which the rentals are due and unpaid."

I further refer to a letter, the original of which will be produced next week, under date of July 25, 1895, addressed to George L. Record, Counselor-at-Law, Jersey City, N. J., and signed John P.

Stockton, which letter reads as follows; I wish you would particularly attend to this letter:

"My dear Mr. Record: In reply to your letter of the 24th, just received, I have to say that any payment made through you should be made by check drawn to the order of George B. Swain, State Treasurer, and forwarded under cover to me.

In reference to your compensation, if you want some money now, I suggest that you make out a moderate bill, separating the expenses from the service, and attach to it the resolution of the Riparian Commissioners, of which you sent me a copy, and I will present it to the Governor and see if I cannot put it in shape to be paid at once.

When some important result is reached, such as the cancelling of the Brownell leases, or the settling of the Annett matter, it will be easier, of course, to get you a proper compensation, than in the ordinary routine of matters. I am,

Very truly yours,

JOHN P. STOCKTON,

B."

MR McCARTER.—I will state to the Committee as I understand that correspondence, which speaks for itself, by the brief which I produced this morning, signed by Mr. Record; he is appearing in opposition to an application of Mr. Stockton to forfeit the Annett lease, acting for some of the Annett heirs and about the same time is purporting to represent the State against the Annett heirs, and is asking the Attorney-General for compensation for so doing. The original letters will be produced at the next hearing.

SENATOR AVIS.—What is the date of the letter you last read?

MR. McCARTER.—July 25, 1895.

SENATOR AVIS.—And the information filed by the State was what date?

MR. McCARTER.—1891; the brief is not dated,

SENATOR WAKELEE.—Does the record show anything about that brief and the information you handed me this morning?

MR. McCARTER.—I think not. I offer in evidence, to have marked as an exhibit, without undertaking to spread them upon the record, a certified copy of an information in Chancery between John P. Stockton, Attorney-General, informant, and the Annett heirs, defendant, information; principal sum, $10,825.00, filed April 9, 1891.

Also a brief in the same case on motion to dismiss information, George L. Record, of counsel for the defendant Hawes, the brief

being signed by Mr. Record in his own handwriting, and which documents, as I stated to the Committee before, were found among the effects of Attorney-General John P. Stockton, which were removed by him after his term expired to the office of his son in Jersey City, and found by my assistant, Mr. Backes.

Q. I ask Mr. Payne if the signature of George L. Record at the bottom of the brief, of counsel with defendant Hawes, is Mr. Record's handwriting? A. I say it is.

SENATOR MINTURN.—I don't exactly understand how the information and brief were obtained.

MR. McCARTER.—I will tell you. When Attorney-General Stockton's term expired, he had no other office than the office upstairs in this building, and his own papers and the State's papers were all confused. He was also, as you all remember, very near-sighted, nearly blind, and he had his personal library in the same room. When he retired and Attorney-General Grey took his place, Mr. Stockton gathered together what he thought were all his papers, all his books, and removed them to the office he opened in Jersey City, the office of his son. He took with him a number of records that really belonged to the State, including these papers, and when this matter became one of importance, I had one of the young men hunt up this record and he could not find it, and Mr. Backes, who was here under Attorney-General Stockton, said he had no doubt that it was in Jersey City, because he found on several occasions before, in hunting for old records, that Mr. Stockton had mistakenly taken them away, and he had permission from Mr. Stockton to go right there and search for anything that was missing, so he went and found this paper in the boxes in his son's office in Jersey City.

SENATOR AVIS.—Was the certified copy there also?

MR. McCARTER.—Yes, sir. Now I will state frankly to the Committee one thing more. The files—as I think Mr. Record testified, there were two informations filed to cover the two leases—the files have disappeared from the office of the Clerk of the Court and cannot be found. We only find the files in one case, and my claim in regard to that is, that they were left with Chancellor McGill when the argument was had on that motion and never decided, and probably gotten mislaid among his papers. That is a mere surmise on my part. I can't understand how the original could have disappeared otherwise. I am going to prove it by the Clerk in Chancery, that he has made a most thorough search and only found the record in one case, and that conforms entirely with Mr.

Record's testimony that he sent a young man down and could only find one.

Q. Do you know in whose handwriting this brief is endorsed? I say the entire endorsement on the brief is Mr. Record's handwriting.

MR. McCARTER.—I will state to the Committee that I have seen all these letters that I have read copies to the Committee today, and will produce the originals at the next meeting.

Mr. Fisk in his testimony last week said, on page 539: "The policy of the Board with reference to charging the price for riparian lands, was almost altogether determined by the then incumbent of the office of Governor. When a new Governor would come in it was customary for the Board to have the Secretary to present to him all the general information as to the policy of the Board and the situation, and at the first meeting at which the Governor would be present, to express to him what the situation was in different localities, and give him a general idea how matters stood, and my experience has been that the different Governors had different views as to such matters. For example, Governor Abbett—"

That part of the answer gives me the cue to ask this question:

Q. What have you to say as to the allegation that the Secretary, being yourself, during your incumbency, would go to the Governor and give him general information as to the policy of the Board and the situation; what have you to say as to that, so far as you are concerned? A. It has no foundation in fact; it is not true; I never did such a thing. The only Governor that I recall taking more than an amicable part in the discussions before the Board was Governor Griggs expressing his opinion that the application of the Ellis and Company grant was that of a very valuable right, and I remember distinctly it was Governor Griggs' idea in that matter, as in the one other matter that I recall—his idea was that the State's lands were very valuable.

Another instance, which is one of the exceptions to the invariable rule that I never discuss such matters with the Governor, and never remember a Governor taking the initiative at the beginning of his term, was in the case of the application of Harry K. Stevens, presented by Mr. Fisk. This application was presented after the Edgewater and Fort Lee license was granted. Mr. Fisk previously came into my room, in the suite of rooms that the Commissioners then occupied one of and talked over the matter of price. He took up the grant of P. S. Ross, and had made a calculation of what that grant would produce, or what rate per foot that price would produce, and applied that to the application that he was interested in, and

reached the conclusion that $35.00 to $37.00 a foot would be a fair price for the land applied for by his client.

Q. This was after Mr. Fisk left the Board? A. No, I think it was—yes, probably after he left the Board. When Mr. Fisk had been before the Board and presented this application of Harry K. Stevens, he said to the Board that the granting of this Edgewater and Fort Lee license was a detriment, and should be taken into consideration by the Board in fixing the price the Board would charge his client. It was so at variance with the understanding of the Governor and the action of the Commissioners at the time the license was granted, that I took immediate notice of it, as I had taken notice of the fact that Mr. Fisk's mind was directed to $35.00 to $37.00 a foot, which was a wholly inadequate price in my judgment. The application was laid over, and some time afterwards I went out to Governor Murphy to see what day would suit his convenience, if he cared to go with the Board on an inspection of this water front, which was ordered. I took occasion to tell Governor Murphy that it was claimed by this applicant that the presenting of this license was a detriment to this land, and the Governor at once, without waiting for me to recall to his mind the fact, said: "Why, Mr. Payne, when the application for that Edgewater and Fort Lee license was made, and the applicant appeared, and the people appeared before the Board supporting it, the contention was that the license would greatly increase the value of the State's lands, and the figures were produced in a brief by Mr. Babbitt to show what a great increase it would produce in the State's lands," and he said, "It was on that ground that I favored the granting of the Fort Lee and Edgewater license." And he said, having that in mind, "I don't now think that I would be willing to support a grant of that land for less than a hundred dollars per foot." I hesitate to say anything, except that I can prove by reference to the records, but I say I mentioned the Governor's statement to some members of the Board.

Q. With that exception, in what cases did you ever speak to the Governor about this matter? A. That is the only case in which I spoke to the Governor, mentioning the prices to him in a way to influence him, or direct his attention away from anything that the Board had taken into consideration. I didn't consider it was his duty to look into the details of matters, what the Board should charge for riparian rights.

Q. You have also put in evidence a letter you wrote to Governor Stokes concerning prices? A. Yes, sir; that was at Governor Stokes' request.

Q. With that exception, and the conversation with Governor Murphy, you say you have never addressed the Governor with reference to prices? A. Never.

Q. One thing more, and I think I am done with you. Reference was made this morning to a portion of your testimony in which you spoke of the Board being a family affair, and that in your opinion the Commissioners had abused their privileges. I don't quote that correctly. I haven't the record before me. The propriety of such a statement is challenged and suggested by Mr. Fisk that it be stricken from the record, and before you leave the stand I would be glad if you have anything to say, to say it.

MR. DUFFIELD.—On page 428 of the record, being under cross-examination by Mr. Record, you say:

"It would seem that I had a lot of influence, but I didn't have any influence, I tell you personally, and I say to you now that the riparian interests of this state were a family affair, if not a personally conducted affair in all those years, and I believe that the riparian interests of the state have been shamefully abused in all of those years."

A. I have no correction or retraction to make of that statement and I remember making the statement, and I have no retraction to make of it, except a word of explanation that I intended not to reflect, because I didn't know the motive or the interest that lay back of the action of the Board, not nearly so much as I know now, having gone through the records of the office and seen how one member of the Board was interested in some of these applications. I reiterate that statement fully, and from my recollection I saw grants of the State's lands being made as has been testified—I think nothing can explain that situation more fully than Mr. Fisk's statement of this Hudson River grant. Explanations have been made of actions that were not made at the time the questions were asked, and I remember, at the time the grants were made, laughing with Mr. Holt. Take, for instance the Morris Building Company. I remember laughing with Mr. John I. Holt, and I remember Mr. Fisk making a statement to the Board of what a fine thing this would be of having this grant made, and then asking to be excused, and then we made the remark to each other that it was pretty fine to present that matter in that way and then ask to be excused. I mean also by that, that there was no reference paid to the actual value of the uplands in any of these cases, and nothing can show that more fully than the varying prices, and that a man should come here and say that the Delaware river front, at the city of Camden, with a front-

age right on the main channel of the Delaware river is worth no more than the poor flat land in front of the clammers, on the south shore of the Shrewsbury river, where the channel changes almost every year, and where you can't get a crab car up at high tide—is altogether perfect corroboration of what I have stated. That was the system. I can't prove that a member of the Board, who, when I undertook to get at a proper price to be charged, rebuffed me, but the testimony will show what the price was—but I can't prove by the evidence, when I undertook to get at the proper price for that, by taking the different classes of water front and applying to it the prices that have been charged, which would have brought the price up to $8,000, and the grant was made for $1,500, that the attorney of the applicant laughingly said afterward—I was prepared to pay $2,000. But that statement is as truthful and as capable of proof by the records of the office as I can make it. And so that was the system of the office—

BY SENATOR MINTURN.

Q. I didn't understand Mr. Fisk to say that the lands opposite Philadephia at Camden were less valuable than at the Shrewsbury river. I understood that there were parts of the Shrewsbury River that were more valuable than these particular parts referred to by the Attorney-General? A. I am willing to have that stand, but the Attorney-General was addressing himself to the price on the Delaware, where from two to five dollars was charged, he didn't remember which, but those same prices were charged on the Shrewsbury, and I am addressing myself to a comparison of those lands where the prices charged were the same.

BY MR. McCARTER.

Q. What did you mean, or what did you intend to convey, when you used the expression that the Board was run as a sort of a family affair? A. I was coming to that. I testified that it grew up from the fact that Mr. R. C. Baeot was secretary, and then his son was in it, and then his son took Mr. Record in as partner and they ran the office to 1903, when Mr. Record went out.

BY SENATOR WAKELEE.

Q. Is Mr. Record a relative of Bacot? A. Financial; no blood relation. I want to quote on that point, which is better than any testimony I can give. Page 295 of Mr. Record's testimony, just in answer to your question he says: "That the fee buisness and the salary business and the rent and the telephone were all jumbled up together and made a bargain between us." Nothing could better illustrate the situation in the office than that the statement of Mr. Record. Mr. Record was always able to convene the Commission and influence

them, and I can't make my statement any stronger than I did in the testimony which Mr. Fisk found was offensive to him.

BY SENATOR MINTURN.

Q. I can understand how Mr. Record could dominate on questions of law, but I can't understand how he could dominate Mr. Fisk. A. Perhaps, it is fair for me to say, that perhaps there will be testimony to prove that Mr. Fisk's and Mr. Record's ideas were one, and so there was no necessity for domination.

Q. That is all.

THEODORE BACKES, sworn. Examined by Mr. McCarter.

Q. You are a member of the bar? A. I am.

Q. At present connected with the Attorney-General's office? A. Yes, sir.

Q. How long have you been so connected? A. Since July, 1890.

Q. Is there any one now connected with the office that was connected with it during the term of Attorney-General Stockton? A. Connected with the office—no, sir.

Q. You are the only survivor? A. Yes, sir.

Q. What is that book you have before you? A. The original docket kept in the office of the Attorney-General during the term of Attorney-General Stockton.

Q. Do you find in that book any reference to the two informations that were filed by the Attorney-General, Mr. Stockton, in the Annet matters? A. I do.

Q. In whose handwriting are the entries in that docket? A. Mostly in mine, some little in the handwriting of Robert Field Stockton, who was the son of Attorney-General Stockton.

Q. When do the informations appear to have been filed? A. The first information was filed the 8th day of April, 1891; the second was filed the 13th day of April, 1891.

Q. Now, without going down all the entries, won't you read the last two entries in the first information? A. June 27, 1891, the Attorney-General signed stipulation sent by Record extending time as requested. Receive notice from Record that he would move to dismiss the bill on July 13, at Jersey City. By agreement, the motion was postponed for one day, to July 14, at the State house in Trenton.

July 14, 1891, Mr. Record commenced to open his case, but the Chancellor decided him out of time; the State waived this objection, but as the Chancellor could not hear the case on this day, the argument was postponed on such a day as to be agreed upon by counsel and agreeable to the Chancellor.

Q. That is the last entry in the case? A. Yes, sir; and that is in my handwriting.

Q. How did you get the information to enter that? A. Either from Attorney-General Stockton personally, or from his son, Robert Field Stockton.

Q. Who was associated with him in the matter? A. Yes, sir.

Q. When they came back they made that report to you and you entered it in the docket? A. Yes, sir.

Q. So it would appear that the brief was filed apparently in 1891? A. Yes, sir.

Q. At my suggestion did you search the files of the office to find the cases in either one of those cases? A. I did.

Q. Were you able to find them upstairs? A. No, sir.

Q. You, of course, remember when Attorney-General Stockton retired and Mr. Grey succeeded him? A. I do.

Q. What did Attorney-General Stockton do with his papers, law books, etc.? A. They were all taken to Jersey City. In other words, in the office at that time was Mr. Richard Stockton, a son of the Attorney-General, and he and I packed up the papers and they were sent to Jersey City to his office, then in the Davidson building.

Q. Were papers that technically belonged to the state, that is, filed in the Attorney-General's office, as distinguished from personal files, by mistake taken along? A. Yes, sir.

Q. Have you had occasion from time to time since then to hunt for old files? A. I think only on one or two occasions; I remember one occasion particularly, that is, the case of the State of New Jersey against Delaware; that was shortly after the Attorney-General had left Trenton, and all the papers in that case were returned to this office.

Q. They had been taken by mistake? A. Yes, sir.

Q. You received from me recently directions to hunt for this file upstairs? A. Yes, sir.

Q. Were you able to find it? A. No, sir.

Q. What did you then do? A. I went to the office of John P. Stockton, Jr., at 1 Exchange Place, Jersey City. I had been to his office about a week previous—the time I got these papers was last Wednesday—I had been to his office about a week previous and there discovered the cases in which the papers had been taken from Trenton.

Q. This is another son? A. That is where John P. Stockton is now located, at 1 Exchange Place. There he has all the files of the late Attorney-General, and I made search and found these papers; one is an information, a copy of an information filed by Attorney-

General Stockton, and the other is what purports to be the brief of Mr. George L. Record.

Q. That is all.

Adjourned until Monday, September 24th, 1906, at 10.30 a. m.

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